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THE SOCIAL LEGISLATION OF THE PRIMITIVE SEMITES

THE SOCIAL LEGISLATION

OF

THE PRIMITIVE SEMITES

BY

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TO MY WIFE'S FATHER

PREFACE

The following work has grown out of a thesis presented in 1912 to the Faculty of the Graduate School of the University of Pennsylvania in partial fulfilment of the requirements for the Doctorate. The author does not pretend to great originality in the views set forth in this volume, as will be apparent from the numerous references in the footnotes. However, it is but fair to say that the present writer was frequently obliged to choose his way between conflicting theories and arguments, and to collect the scattered rays of light from various sources. An endeavor has been made to present as clearly as possible the leading facts of a most interesting subject.

For obvious reasons, the transliteration of well-known Hebrew words, especially proper names (except Jehovah = Yahwe, pronounced 'Yahvay'), is in substantial agreement with the established precedents of the English Authorized Version. The system of transliteration employed in the case of other Semitic terms is almost identical with the one proposed by the International Oriental Congress (1894), as well as by the Royal Asiatic Society (see Appendix, *Jour. Roy. Asiat. Soc.*, 1896, 1912).

The kind attention of readers is invited to the list of principal abbreviations, to the index of biblical references, and to the index of subjects.

My thanks are due to Professor Morris Jastrow, Jr., and Assistant Professor James A. Montgomery of the University of Pennsylvania, for valuable sug-

gestions and criticisms. I would also gratefully acknowledge the numerous courtesies and helpful suggestions which I owe to Professors Albert T. Clay and Charles Foster Kent of Yale University, to Professor George A. Barton of Bryn Mawr, to Professor William J. Hinke of Auburn, to Dr. Cyrus Adler of Dropsie College, to the late Professor Robert Francis Harper of the University of Chicago, and to Professor Herman V. Ames, Dean of the Graduate School of the University of Pennsylvania. For assistance in proofreading, I am greatly indebted to Drs. M. Willard Lampe and Frank M. Urich. Finally, I have the honor to dedicate this book to George Kessler, Esq., my wife's father, as a token of regard and esteem.

HENRY SCHAEFFER.

PHILADELPHIA, April, 1915.

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PRINCIPAL ABBREVIATIONS EMPLOYED

A.A.R. Meissner, B. E.: *Aus dem altbabylonischen Recht. Der Alte Orient* (1905), vol. VII, pt. 1.

A.B.R. Kohler and Peiser: *Aus dem Babylonischen Rechtsleben,* I–IV. Leipzig, 1894–1898.

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B.E. *Babylonian Expedition of the University of Pennsylvania.* Series A: Cuneiform Texts.

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H.A.^{2} Benzinger, I.: *Hebräische Archäologie.* Ed. 2. Tübingen, 1907.

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H.W.B. Gesenius, W.: *Hebräisches und Aramäisches Handwörterbuch.* Leipzig, 1905.

I.L.L.P.	Kent, C. F.: *Israel's Laws and Legal Precedents,* in *Student's Old Testament.* Charles Scribner's Sons, copyright 1907.
K.A.T.	Schrader, E.: *Die Keilinschriften und das alte Testament.*
K.B.	Schrader, E.: *Keilinschriftliche Bibliothek.*
K.H.A.T.	*Kurzer Hand-Commentar zum Alten Testament.*
L.M.C.H.	Cook, S. A.: *The Laws of Moses and the Code of Ḥammurabi.* London, 1903.
O.L.Z.	*Orientalistische Litteraturzeitung.*
P.A.O.S.	*Proceedings of the American Oriental Society.*
P.E.F.	*Palestine Exploration Fund Quarterly Statement.* London, 1869–1913.
R.A.H.	Wellhausen, J.: *Reste arabischen Heidentumes,* in *Skizzen und Vorarbeiten,* vol. 3. Berlin, 1887.
R.B.A.	Jastrow, M., Jr.: *Religion of Babylonia and Assyria* (1898); *Die Religion Babyloniens u. Assyriens.*
R.B.A.	Rogers, R. W.: *Religion of Babylonia and Assyria* (1908).
S.B.O.T.	Haupt, P.: *Sacred Books of the Old Testament.*
S.I.J.F.	Bertholet, A.: *Die Stellung der Israeliten und der Juden zu den Fremden.* Freiburg, 1896.
S.V.I.	Buhl, F.: *Die Sozialen Verhältnisse der Israeliten.* Berlin, 1899.
T.A.N.	Clay, A. T.: *Documents from the Temple Archives of Nippur,* in *B.E.,* XIV.
Z.A.	*Zeitschrift für Assyriologie.*
Z.D.M.G.	*Zeitschrift der Deutschen Morgenländischen Gesellschaft.* Leipzig, 1847–1913.

THE SOCIAL LEGISLATION OF THE PRIMITIVE SEMITES

CHAPTER I

MATRIARCHY

It is not in the plan of this book to give a detailed account of the structure of primitive society. At the same time a knowledge of the salient features of kinship as reflected in the biblical records is of first importance because of their direct bearing on the subject of property and its distribution. Property rights are necessarily determined by relationship.

Sociologists have long maintained that the metronymic group represents an earlier form of social integration than patriarchy.[1] Under the maternal system the mother takes precedence of the father in the determination of kinship. Names are given to the children by the mother. This virtually implies that the children are henceforth looked upon as belonging to the mother's clan. As the nearest of kin the 'maternal uncle' occupies a position of supreme authority over the mother and her children. Inheritance is from brother to brother and from maternal uncle to nephew.[2]

Survivals of matriarchy are to be met with in some of the oldest portions of the Pentateuch. Wellhausen observes that the *J* document may be distinguished in many cases from the priestly code in that the former reckons descent through the

[1] Giddings, F. H., *Principles of Sociology*, 158 f.

[2] Wellhausen, J., *Die Ehe bei den Arabern, Götting. Gel. Nachrichten* (1893), 474 f.

mother; the latter, through the father.[3] The existence of ancient words denoting relationship derived from the mother points to a primitive kinship through the mother.[4] It is but reasonable to suppose that female tribal names, such as Hagar and Keturah, Leah and Rachel, Bilhah and Zilpah, owe their origin to a rule of female kinship.[5] Names are given to the sons of Jacob-Israel by Leah and Rachel, the wives of Jacob.[6] A like prerogative is accorded the mother in Judg. 13:24; 1 Sam. 1:20; 4:21. Even women in attendance may exercise this right.[7] The ceremony of adoption by which Bilhah's children are acknowledged by Rachel as her own is another indication of the presence of matriarchy.[8] Furthermore, Rebekah appears to be under the special guardianship of her brother.[9] Laban's insistence on his right to retain the wives of Jacob and their children remains unintelligible unless we assume a type of *beena* marriage of which this is a remnant. After serving Laban for twenty years Jacob endeavors to carry away his wives and children by stealth. When finally overtaken, Laban reproves Jacob for his act, inasmuch as the daughters and children are his. "And Laban answered and said unto Jacob, The daughters are my daughters and the children are my children."[10] Mr.

[3] Wellhausen, J., 478, note 2.
[4] Smith, W. R., *Kinship and Marriage in Early Arabia*, 32, 38 f.
[5] Benzinger, I., *Hebräische Archäologie* (ed. 2), 104.
[6] Gen. 29:31 f.; chap. 30; 35:18.
[7] Ruth 4:17.
[8] Gen. 30:3.
[9] Gen. 24:50–55.
[10] Gen. 31:43.

Giddings observes that "the wife and children in *beena* marriage always belong to the horde of the wife. If the husband chooses to go back to his own people, he must leave his family and property unless he can get them away as plunder, as Jacob did when he left Laban."[11] Abimelech's career is rendered possible by 'his mother's brethren . . . and the family of the house of his mother's father,' who enable him to carry out his plot against the house of Gideon. The sole basis of appeal, apart from mere ambition, is maternal relationship.[12]

The extant evidence, it may be noted, is in the main rather of a suggestive than convincing character. More than this cannot be affirmed as to the existence of matriarchy even among the Arabs[13] and Babylonians.

There is a strong probability that uterine ties alone once constituted kinship in Arabia.[14] Temporary monandrous marriages or marriages of the *mut'a* type between individuals of exogamous groups may be instanced as a survival from the period of matriarchy.[15] Marriage among the Saracens appears to have been of this character. Ammianus Marcellinus relates that "to give the union

[11] *Princ. Soc.*, 268.

[12] Judg. 9: 1–6.

[13] Wellhausen, op. cit., 479.

[14] W. R. Smith, *Kinship*, 177 f., 203, 213; Wellhausen, *Ehe*, 478; Kohler, J., *Zeitschrift für vergleichende Rechtswissenschaft*, v. 8, pp. 240 f.; Bertholet, *S.I.J.F.*, 57; Day, E., *The Social Life of the Hebrews*, 24, 238; Benzinger, op. cit., p. 103.

[15] W. R. Smith, op. cit., 85, 91; Wellhausen, op. cit., 474; Kohler, J., op. cit., p. 382.

an appearance of marriage, the wife offers her spouse a spear and a tent by way of dowry.''[16] Where this type of marriage prevails, the woman is a free agent, disposing of herself as she pleases. The children of the union belong to the mother's clan, the father's relation to his children being of no consequence. It appears that the mother has a right to give names to her own sons.[17] In the usual preliminaries to a marriage contract the maternal uncle often plays a prominent part.[18]

The fact that a number of ancient words expressive of the bonds of kinship are derived from the mother, furnishes additional data in favor of the onetime existence of mother-kinship in early Arabia. Thus the Arabic equivalent for uterus,[19] a word frequently used for kinship, affords an instructive example of the case in point. *Baṭn,* another Arabic word, has a variety of meanings, viz. venter, uterus, race, clan. In its more specific sense the word refers to descent through the female line.[20] So again the word for breast in Arabic is generally applied to relationship. *Umma,* a derivative of *umm,* mother, also comes to mean people, nation, community.[21]

By the side of male eponyma numerous female tribal names are found.[22] ''The two great branches

[16] *Kinship,* 81; *Ehe,* 445: ''dotis nomine futura coniunx hastam et tabernaculum offert marito.''

[17] *Ehe,* 478; *Kinship,* 124.

[18] *Ehe,* 477 f.

[19] *Raḥim,* womb; cf. *Kinship,* 176, *Ehe,* 475.

[20] Ibid., 475, note 3.

[21] In Arabic *umma* sometimes appears in the sense of religious community. Cf. *Kinship,* 32, n. 2.

[22] Ibid., 29 f., 204; *Ehe,* 476; Kohler, op. cit., 240.

of *Muḍar* are *Qays* and *Ḫindif,* and the latter is said to be wife of *Al-Yas* and great-granddaughter of *Quda'a*.. The joint-name of the *Aws* and *Ḫazraj* is *Banu Qayla*. . . Qayla seems to be the feminine of the well-known *Ḥimyarite* title *Qayl.* The *Banat Qayla* are different. They appear to be an independent family, and Wellhausen formerly conjectured that they had matriarchy. The sons of *Jadila* are one of the two great branches of the *Ṭayyi,* and they are named after their mother. At the battle of *Bu'ath* the *Banu 'Abd al-ashhal* shout: We are the sons of *Ṣaḫra*—but *Murra bint Ẓafar* is their ancestress. The *Fezarites* are named *Manula* after the wife of *Fezara.''*[23] Considerations of space forbid any further enumeration of similar examples.

The ownership of tents[24] by women, it is argued, is best explained by assuming an old law of female kinship.[25] But this is far from convincing in view of the fact that primitive industrial arts were exclusively in the hands of women, the latter simply claiming as their own the products of their industrial habits.[26]

If the institution of matriarchy ever existed in ancient Babylonia, its traces have nearly all disappeared. A recent writer, quoting Sayce, remarks that whereas "in the old Sumerian hymns the

[23] *Kinship,* 29, n. 1.

[24] *Ahl,* equivalent to the Hebrew *ohel,* tent, family, kindred group.

[25] *Kinship,* 202 f.; *Ehe,* 478; Bertholet, *S.I.J.F.,* 57, n. 5; Buhl, *S.V.I.,* 28.

[26] Compare with this the development of private property on pages 228 f.; Cook, S. A., *The Laws of Moses and the Code of Ḫammurabi,* 92, n. 4.

woman takes precedence of the man, the Semitic translation invariably reverses the order: the one has 'female and male,' the other 'male and female,' and this is reflected in the position of the goddess Ishtar, who, originally a goddess, the equal of the god, became changed into a male deity in Southern Arabia and Moab.''[27] Buhl, in his *Soziale Verhältnissen der Israeliten,*[28] would find a last survival of the institution in the fact that a son-in-law might be received into his wife's family by accepting the family cult. It is to be remembered, however, that even orphans and slaves could be adopted into Babylonian families under precisely the same terms. The argument is sometimes brought forth that the high position accorded women in the Code of *Ḫammurabi* bcomes intelligible by postulating the prevalence of matriarchy in pre-historic times. But the argument is not conclusive owing to the superior commercial development of the Babylonians as over against their neighbors.

[27] Cook, S. A., p. 72, n. 2.

[28] Page 28, n. 1., cp. Peiser, *Mitteilungen der Vorderasiat. Gesellschaft* I, 1896, 155.

CHAPTER II

PATRIARCHY

On the strength of the material available it will be within the limits of probability to conjecture that the matriarchal clan was the dominant form of social organization prior to the settlement in Canaan. All the essential pre-suppositions of such an institution are met by the period of nomadism. A turning point in social development is reached by the passage from nomadism or semi-nomadism to agriculture. The acquisition of land, be it by conquest or by the cultivation of the soil, marks an important epoch in the scale of human culture. Land from now on becomes an economic factor to be reckoned with. The possession of land by an agricultural community naturally contributes its share to the conception of property. The idea of property again reacts on social integration as may be inferred from the transition of maternal to paternal relationship. In his work on *Ancient Society,*[1] Mr. Morgan says: "After domestic animals began to be reared in flocks and herds, becoming thereby a source of subsistence as well as objects of individual property, and after tillage had led . . . to the ownership of houses and lands in severalty, an antagonism would be certain to arise against the prevailing form of gentile inheritance. With property accumulating in masses and assuming permanent forms, and with an increased proportion of it held by individual owner-

[1] p. 345.

ship, descent in the female line was certain of overthrow and the substitution of the male line equally assured." To be sure, fossil remains of the older system make their appearance here and there, as above indicated, thus furnishing but one of many illustrations of the persistency of institutions in general. Descent in the female line could not survive in the face of changed conditions. Where the older custom was strong enough to assert itself, the change was often effected at the expense of a compromise. But under the monarchy patrilineal descent is an established principle, and all hereditary property descends in the male line. Having thus called attention to the change from maternal to paternal relationship after the settlement in Canaan, it does not necessarily follow that the latter is a purely Palestinian product. No great difficulty will be experienced in postulating a nomadic environment for the practice of reckoning descent through the mother. In surveying some of the material at our disposal we found that the maternal system is already a declining institution when first emerging into the light of history. From what we know of the growth of institutions in general, patriarchy, like its precursor of nomadic days, presupposes a long period of social development. The conditions of agriculture alone will not explain it. The beginnings of paternal relationship undoubtedly go back to a remote antiquity.[2] Paternal authority ultimately triumphs on Palestinian soil. In referring to agnatic relationship technical terms are used at an early period. Corresponding terms denoting

[2] Wellhausen, *Ehe*, 446, 479.

maternal relationship are unknown. This is at least indicative of an early predominance of patriarchy among the Hebrews, that is, if the testimony of language may be taken seriously.[3]

Under the system of patriarchy fathers exercised great rights over their families. "The chief lineaments of such a society as collected from the early chapters of Genesis are these:—The eldest male parent—the eldest ascendant—is absolutely supreme in his household. His dominion extends to life and death, and is as unqualified over his children and their houses as over his slaves; indeed, the relations of sonship and serfdom appear to differ in little beyond the higher capacity which the child in blood possesses of becoming one day the head of a family himself. The flocks and herds of the children are the flocks and herds of the father, and the possessions of the parent, which he holds in a representative rather than in a proprietary character, are equally divided at his death among his descendants in the first degree, the eldest son sometimes receiving a double share under the name of birthright, but more generally endowed with no hereditary advantage beyond an honorary precedence."[4] Sir Henry Maine's contributions to the study of comparative jurisprudence gave a much-needed impetus to subsequent studies along kindred lines. With the advance of science, however, many of his views are no longer tenable. For instance, *patria potestas* of the Roman type cannot be fully applied to Hebrew society of historical times.[5] Relics of what appears

[3] Ibid., 480 f.; Gesenius, *H.W.B.* (1905), 543.
[4] Maine, *Ancient Law*, 119.
[5] Dillmann, *Deut.*, 340; *Kinship*,[2] 142.

to be an original *jus necisque* may possibly be found in the ancient practice of sacrificing children to the deity.[6] But the full exercise of *patria potestas,* if it ever did exist, was soon checked by public opinion, later incorporated in the book of Deuteronomy. Parents may chastize their children, but not inflict capital punishment upon them.[7] A stubborn son is to be brought to the elders of his respective city and then stoned to death by the members of the community.[8] The intermediary position of the 'courts,' whatever their jurisdiction in such a case, had a tendency to bring about a milder form of paternal power than among the Romans.

There are but few traces of a rigid type of *patria potestas* among the ancient Arabs. In a state of society where marriage does not involve the transfer of the woman to the stock or kin of her husband, the status of women would naturally be superior to that of women *in manu* as in the case of Roman law. This will explain why the husband could not exercise the power of life and death over his wife as he might over a slave, for instance. A returning huntsman, observing from a distance that two of his wives were engaged in a deadly combat, shot an arrow in the direction of the two combatants with the intention of deterring them. One of the women was accidentally killed, and the man was obliged to make compensation to her family.[9]

[6] Judg. 11: 30–34; Gen. 22: 1–13, et al.

[7] Prov. 19: 18.

[8] Deut. 21: 18–21.

[9] Procksch, *Über die Blutrache bei den vorislamischen Arabern und Muḥammads Stellung zu ihr,* p. 61.

As regards the status of sons, *patria potestas* was recognized up to a certain point among the Meccans and the people of Medina.[10] In Mecca the father's authority even extended over sons of a marriageable age and capable of bearing arms. This much was insisted upon by the *Quraysh* before making a compact with the prophet of *Allah*. It was for the father to determine the religion of his grown-up sons, the latter having little or no choice in the matter. But this state of dependence practically ceases as soon as the son advances to the rank of a property holder. Release from paternal power is secured by the son of *Sa'd ibn'Ubada* after receiving a portion of his father's estate. The possession of property is a necessary prerequisite to the full enjoyment of the rights of citizenship.

By virtue of his authority, the paternal head of the family might also repudiate a grown-up son in order to please the young man's stepmother. The father, moreover, had power to impose the status of marriage on his minor children. Among the *Ḥanifites* of Turkey and Central Asia the right of *jabr*[11] terminates with puberty.[12] *Shafi'ite* law,[13] on the other hand, declares that daughters shall be subject to the authority of the father until they are married, regardless of whether or not they had previously attained the age of puberty.[14]

Parental authority is strongest in commercial centres like Mecca and Medina. It is weakest in

[10] *Ehe*, 459.

[11] 'the right of imposing the status of marriage on minor children.'

[12] Usually the fifteenth year.

[13] i. e., in Syria and Lower Egypt.

[14] Syed Ameer Ali, *Muḥammadan Law*, II, 236.

the desert where "the principle of uncontrolled individualism is only kept in check by the imperious necessity for mutual help against enemies which binds together, not individual families but the whole *ḥayy*,[15] not kinsmen within certain degrees but the whole circle of common blood."[16] Nothing but the pressure of public opinion could succeed in establishing the claims of a mild type of paternal power. In a footnote of his second edition of *Kinship and Marriage* Robertson Smith further remarks: "Parental authority is so weak that a chief who wishes his only son to divorce a barren wife has first to vow that he will never speak to him, and then to call in all the elders and warriors of the clan to persuade him."[17]

Paternal rights were recognized in Babylonia to an extent even greater than in Israel or Arabia. Though less despotic in its nature, the father's authority over the members of his family may be said to approximate the rights and privileges of the *pater familias* of ancient Rome. Thus in the pre-Semitic or Sumerian period a rebellious son may be sold into slavery by his father: "If a son say to his father, 'Thou art not my father,"[18] he may brand him, lay fetters upon him, and sell him for silver" (as a slave).[19] The same principle is subsequently extended with some limitation to all members of the

[15] 'clan.'
[16] *Kinship*,[2] 68.
[17] Ibid., loc. cit.
[18] *ul abi atta.*
[19] Cf. *Series Ana Ittishu*, Tablet 7, Col. III, ll. 22 f.

family in case of debt: "If a man be in debt and sell his wife, son or daughter, or bind them over to service, for three years they shall work in the house of their purchaser or master; in the fourth year they shall be given their freedom."[20]

According to the old *Sumerian Family Laws* the father has power to repudiate and disinherit a son without further notice. The simple formula: 'Thou art not my son' having once been pronounced by the father, 'the son shall leave house and walled enclosure' immediately. This law reappears in a modified form at a time when the counteracting influences of Semitic individualism as embodied in the legislation of Babylonia's greatest and most distinguished ruler and law-giver, *Ḫammurabi,* began to assert themselves. The Code insists on legal process in the case of alleged insubordination on the part of a son: "If a man set his face to disinherit his son and say to the judges: 'I will disinherit my son,' the judges shall inquire into his antecedents, and if the son have not committed a crime sufficiently grave to cut him off from sonship, the father may not cut off his son from sonship."[21] Punishment shall be suspended, provided it be the delinquent's first offense, but 'if he commit a grave crime a second time, the father may cut off his son from sonship.'[22] For assault and battery on a father more stringent measures are adopted: 'If a son strike his father, they shall cut off his hands.'[23]

[20] Harper, *The Code of Ḫammurabi,* §117.
[21] Ibid., §168.
[22] Ibid., §169.
[23] Ibid., §195.

Moreover, the father was at liberty to make over a gift by written deed to a favorite son. 'If a man present field, garden or house to his son, the first in his eyes,[24] and write for him a sealed deed, after the father dies, when the brothers share, he shall take the present which the father gave him, and over and above shall share equally with them in the goods of his father's estate.'[25] The father's right to select a bride for his son is absolute and indisputable. This we learn from a law-suit in the time of Cyrus. To insure the legality of a marriage contract the consent of the bridegroom's father must be obtained, otherwise the marriage is either annulled or the daughter-in-law reduced to the level of a concubine.[26]

The way is now open for a discussion of the patriarchal family and its constituent members. Theoretically such a family was composed of the actual descendants of the father. Under the pressure of circumstances, however, the expedient of adoption was resorted to by which outsiders were admitted into the membership of the group. The rights and privileges thus conferred will be taken up in their proper place.

Once more we shall have to run counter to a statement made by Sir H. Maine with regard to the property rights of the head of the patronymic group; since all those dependent on the patriarchal head belong in the same category as all other possessions

[24] 'The apple of his eye.'

[25] §165.

[26] Kohler and Peiser, *A.B.R.* II, 7 f.; Johns, *B.A.L.C.L.*, 137.

held by the family, such as houses, lands, and cattle. For in ultimate analysis the head of the household group is the only owner of the property. He is "the proprietor of his wife, or wives, children, slaves, cattle, houses, lands, etc."[27]

A brief study of the word *ba'al* will serve as a good illustration of what we mean. The Hebrew designation for the proprietor of a house and its inmates is *ba'al habbayit*.[28] *Ba'al* also occurs in the sense of husband. This is evidenced by the equation of *ba'al* with *ish*.[29] The wife of such a *ba'al* is sometimes spoken of as the *be'ulat-ba'al*, or *be'ula*.[30] The idea of possession may be readily deduced from a comparison of *ba'al ishsha* with *ba'al hashshor*. Ex. 21:3 obviously refers to the possessor of a wife, and Ex. 21:28 to the owner of an ox. The word *ba'al* may be even applied to a creditor or property holder.[31]

Whatever may be said concerning the elevated social position and independence of the Babylonian woman in business affairs, it will ultimately be made clear that the woman, notwithstanding this, is a property which can be acquired by purchase, the buyer receiving full marital rights in return. Perhaps it will be surprising to note that the Code of *Ḫammurabi*, in which business relations are main-

[27] Wallis, *Sociological Study of the Bible*, 41; cp. *Journal of Sociology* (1908–09), XIV, 324.

[28] Judg. 19:22 f.

[29] 2 Sam. 11:26; Hos. 2:18.

[30] Gen. 20:3; Deut. 22:22; Isa. 54:1; 62:4.

[31] Deut. 15:2.

tained independently by women, throws interesting sidelights on the linguistic phenomena just considered. Every shade of meaning given to the Hebrew *ba'al* has its parallel in the Code. Thus, *be-el bitim*[32] denotes the owner of a house, and *be-el ash-sha-tim*[33] means the possessor of a wife. The act of 'taking' a wife is usually expressed by the third person singular of the verb *aḫazu*,[34] whilst in the Neo-Babylonian period the idea of posession is given greater prominence by the synonymous usage of *aḫazu* and *rashu*, 'to possess.'[35] There can be no question as to the fundamental idea of the word *bel* in such combinations as *be-el amtim*,[36] *be-el wardim*,[37] and *be-el alpim*.[38] The *be-el ḫu-bu-ul-lim*[39] is a creditor. Ownership is no less implied in the following expressions: *be-el eqlim*,[40] *be-el she'im*,[41] *be-el kirem*,[42] and *be-el shi-bu-ul-tim*.[43]

From our discussion of the maternal system of ancient Arabia it would appear that mother-kinship is a direct lineal descendant of a rather loose marriage relation. *Mut'a* marriages are condemned by

[32] 16, 25, 120, 125.
[33] 'husband,' 129.
[34] *i-ḫu-uz*, 128, 144–146, 148, 162–163, 166–167.
[35] Meissner, *B.A.P.*, 147.
[36] 'owner of a maid servant,' 119.
[37] 'owner of a slave,' 17, 20; cp. Sum. *lugal* = *belu*, 'possessor, owner;' Meissner, op. cit. 119.
[38] 'owner of an ox,' 245–247.
[39] 48, 151.
[40] 'owner of a field,' 42–44, 46–47, 49–50, 57–58, 62–63.
[41] 'owner of grain,' 120.
[42] 'owner of an orchard,' 59–60.
[43] 'owner of transported goods,' 112.

the prophet of Islam for the reason that *ba'al* marriage with male kinship had already become the dominant form of marriage among the upper classes of Arabian society. According to Robertson Smith *ba'al* marriage or marriage of dominion was constituted by capture or by purchase.[44] Indeed there is abundant evidence to show that marriage by capture was far from being an obsolete institution even in *Muḥammad's* day: 'O ye people, strive to be lenient toward your wives; for they are with you as captives of war.'[45] It is not at all unlikely that the attempt to place marriage by capture on an equal footing with marriage with a betrothed virgin belongs to a period when capture was gradually supplemented by purchase.[46] In marriage by contract or purchase the woman loses her personal freedom and is handed over to the suitor in return for a compensation paid to her father, the girl thus becoming the property of her buyer. A verb commonly used in Arabic to express the bondage of the woman in marriage is *malaka,* 'to rule, govern, possess.'[47] Full marital rights having been procured by purchase, every possible precaution is taken by the *ba'al*[48] of the woman to guard his precious possession with a jealousy which will brook no interference in his newly acquired property rights.[49] But the husband's power over his *be'ula* wife was by no means absolute. She could neither be sold

[44] Cf. *Kinship,* 121.
[45] Cf. *Ehe,* 446.
[46] *Ehe,* 436.
[47] Corresponding to the Hebrew *ba'al.*
[48] 'husband, owner.'
[49] *Ehe,* 447 f.

nor treated as a slave. Wherever practicable the woman's clansmen would do their utmost to protect her in any such contingency which might arise.

As to the occurrence of *ba'l* in Arabic literature, it may be said that the Hebrew and Babylonian uses of the word can be easily reproduced from the extant data. Thus the *ba'l* of a house offers a corresponding parallel to the *ba'al habbayit*[50] of the Hebrew. So again, *ba'l* is used to convey the idea of possession or ownership in expressions like 'the possessor of a wife' and 'the owner of a beast.'[51] In the *Qur'an ba'l* generally means 'lord,' 'husband.'[52]

In *ba'al* marriage the wife becomes the property of her husband.[53] Her rights of property and inheritance are reduced to a minimum as a result of the part played by the *mohar* in nearly every marriage ceremony. Upon payment of the 'purchase-price' to her father or male guardian the woman passes into the ownership of her husband. Gifts received from the husband as well as a few female attendants given to the bride by the father were usually retained by the woman as her personal property.[54] The nature of these gifts might vary from a small trinket to a thousand or more sheqels of silver.[55] Budde[56] quotes Halévy as saying that the eleven hundred sheqels of silver possessed by

[50] 'the proprietor of a house.'
[51] Lane, *Arabic-English Lexicon*, I, 1, p. 228.
[52] Cp. *ba'ala*, 'he (a man) became a husband.'
[53] Smith, *Kinship*, 92.
[54] Gen. 16: 2; 30: 4, 9.
[55] Judges 17: 1 f.
[56] *Judges*, p. 114.

Micah's mother had probably been inherited by the widow from her deceased husband. But this is entirely conjectural. There is not the slightest allusion to inheritance in the context. It would be just as plausible to assume that the money in question corresponds to the *beraka*[57] of Judges 1:12–15 and Joshua 15:19.[58] The identification of Achsah, the daughter of Caleb, with a branch of a Kenizzite clan named Othniel[59] does not invalidate the sociological evidence furnished by these two passages. We, therefore, conclude that the value of the *beraka* bestowed upon the daughter would largely depend upon the father's wealth. The Shunammite spoken of in 2 Kings 4:8 f. is a woman of prominence very likely because she is the espoused wife of a man of substance. To all appearance she is in possession of considerable personal property and hence the expression, *ishsha gedola,* which evidently signifies a wealthy woman.[60] The biblical records are silent as to the extent of this property. At all events it appears to have been presented to the Shunammite either by her husband or by her father. An instructive example of the latter is found in 1 Kings 9:16 where the city of Gezer is presented to Solomon's Egyptian wife as her dowry from Pharaoh, the king of Egypt. The Hebrew term *shilluḥim,* 'dismissal,' properly denotes the parting gift which is given to a betrothed virgin upon her being sent away by the parents.[61]

[57] 'blessing, present.'
[58] Buhl, *S.V.I.,* 33.
[59] Moore, *Judges,* 29.
[60] Benzinger, *Könige,* 135 (*K.H.A.T.*)
[61] Gesenius, *H.W.B.* (1905), p. 758.

Under ancient Israelite patriarchy women's rights of property were, as already intimated, confined to what they had received as a gift. Generally speaking, wives are excluded from inheritance since they are regarded as property. The only passages to the contrary are met with in the book of Ruth: 'Then he (Boaz) said to the kinsman,[62] Naomi who has returned from the land of Moab is about to sell[63] a parcel of land which belonged to our brother Elimelech,' for 'on the day thou buyest the field of the hand of Naomi, thou buyest Ruth,[64] the Moabitess, the widow of the dead, to raise up the name of the dead upon his inheritance.'[65] That the inheritance has fallen to Naomi must be attributed to extraordinary circumstances. The narrative informs us that Elimelech had two sons, who no doubt succeeded to the inheritance left by their father. In course of time both Mahlon and Chilyon die without issue. Their Moabitish wives have no legal claim upon the estate whatever and hence the property reverts to Naomi, the widow of Elimelech. Whether this mode of inheritance is the remainder of a once established custom in the days of Ezra and Nehemiah is a matter of inference resting upon the somewhat similar law concerning the inheritance of daughters,[66] whereof more below. Be this as it may, the passages just cited from the book of Ruth cannot

[62] *goël.*

[63] מִכְרַת, instead of מָכְרָה, cf. *A.J.S.L.* XIX, 145.

[64] Read וגם את רות instead of ומאתרות, so Bertholet and Nowack.

[65] Ruth 4: 3, 5.

[66] Numbers 27: 1–11; 36: 1–12.

materially affect our assertion regarding the older period of patriarchy owing to their post-exilic origin.[67]

With patriarchy on the ascendant and with the practice of marriage by purchase, the legal status of women is reduced to an extremely low level. It is important to bear in mind that wives are in a chattel relation to their husbands. This alone, apart from religious motives, would account for the exclusion of women in matters of succession.

That marriage by purchase had not become totally extinct among the Babylonians is seen from a document dated in the thirteenth year of Nebuchadrezzar: '*Dagil-ilani,* son of *Zambubu,* spoke to *Ḫamma,* daughter of *Nergal-iddin,* as follows: "Give me thy daughter, *Latubashinni,* she shall be my wife." *Ḫamma* agreed and gave him her daughter to wife; and *Dagil-ilani,* in the joy of his heart, gave to *Ḫamma* for *Latubashinni,* her daughter, *Ana-eli-beli-amur,* a maid, for half a mina of silver and a mina and a half of silver to boot.'[68] The amount[69] of the *tirḫatu*[70] or bride-price must be definitely agreed upon before marriage. Without it the suitor would be rejected by the young woman's parents.[71]

[67] But see Kent, *Beginnings of Hebrew History,* 310, §134.

[68] Kohler and Peiser, *A.B.R.,* I, 7; Johns, *B.A.L.C.L.,* 125.

[69] Generally ten sheqels, although the amount might vary from one sheqel to three minas of silver.

[70] Cp. Bab. *ḫirtu,* 'bride, wife.'

[71] Attention is called to a tablet in which both the bride-price and the dowry seem to have been dispensed with. But this is an exception; cf. Kohler and Peiser, op. cit., I, 8.

According to the Code the *tirḫatu* shall be carefully set aside for an unmarried brother on division of the paternal estate: "If a man take wives for his sons and do not take a wife for his youngest son, after the father dies, when the brothers divide, they shall give from the goods of the father's house to their youngest brother, who has not taken a wife, money for a marriage settlement in addition to his portion and they shall enable him to take a wife."[72] In another document a parcel of ground is presented to a marriageable son for a like purpose: 'Six hundred *sar* of good land, situated beside the field of *Niḫiti,* the priestess of *Shamash,* and the field of *Apatu, Ilushu-nasir* has presented to *Ibik-ilishu,* his son, to the end that he may take a wife.'[73]

The bride-price was forfeited by the groom if he broke the engagement: 'If a man has given the marriage settlement and look with longing upon another woman and say to his father-in-law, "I will not take thy daughter;" the father of the daughter shall take to himself whatever was brought to him.[74] But if the father of the girl say to his prospective son-in-law, "I will not give thee my daughter;" the father-in-law shall double the amount which was brought to him and return it."[75]

The degradation implied in marriage by purchase was virtually removed, however, by the practice of returning the bride-price in the dowry or marriage-

[72] *C.H.*, §166.

[73] Meissner, *Aus dem altbabylonischen Recht* (*Der Alte Orient,* 1905), p. 20.

[74] *C.H.*, 159.

[75] Ibid., §160.

portion,[76] as a settlement from the father upon his daughter. In the event of the father's death before her marriage, the duty of endowing the bride fell on his heirs. Among the objects which go to make up the trousseau of a well-to-do Babylonian bride are: 'six gold sheqels for her ear, one gold sheqel for the front of her neck, . . . four rings of silver weighing four sheqels, ten garments, . . . one ox, two three year old cows, thirty sheep, . . . one *Ḫar-Ku-Gu* stone, . . . one *maialtu* bed, five chairs' besides other household articles and servants.[77] The marriage-portion could also consist of house rent or annuities from the father's estate. It might even include landed property.[78]

The husband merely had the usufruct of the dowry. When paid in money, the dowry was sometimes invested by the husband with the wife's consent. How this was done is shown in Babylonian jurisprudence contemporaneous with the exile: '*Bunanitu,* daughter of *Ḫariṣaa,* said thus to the judges of *Nabuna'id,* king of Babylon—

. .''*Abil-Addu-nathan,* son of *Nikmadu,* had me to wife, and he took 3½ mina of silver as my dowry, and one daughter I bore to him. I and *Abil-Addu-nathan,* my husband, traded with the silver of my dowry, and we bought 8 canes, a built house, the territory of a large property, which was within Borsippa, for 9⅔ of a mina of silver, with 2½ mina

[76] *sheriqtu.*

[77] Ranke, *Babylonian Legal and Business Documents,* Series A, vol. VI, pt. 1, p. 26.

[78] Johns, op. cit., 131; Kohler and Peiser, loc. cit.; Cook, *L.M.C.Ḫ.,* 84, note 1.

of silver which belonged to *Iddina-Marduk,* son of *Ikisha,* descendant of *Nur-Sin,* as balance, and we fixed (it) as the price of that house, and we paid and received it together. In the fourth year of *Nabuna'id,* king of Babylon, I made an agreement with *Abil-Addu-nathan,* my husband, concerning my dowry, and *Abil-Addu-nathan,* in the kindness of his heart, sealed the 8 canes, (and) that house which is within Borsippa, and bequeathed it to me for future days, and on my tablet made it known thus: "2½ mina of silver, which *Abil-Addu-nathan* and *Bunanitu* took from *Iddina-Marduk,* and paid as the price of that house, they received together." He sealed that tablet, and wrote thereon the curse of the great gods. In the fifth year of *Nabuna'id,* king of Babylon, I and *Abil-Addu-nathan,* my husband, took *Abil-Addu-amara* as our son, and wrote the tablet of his sonship, and made known 2 mina 10 sheqels of silver and the furniture of a house as the dowry of *Nubta,* my daughter. Fate took my husband, and now *Aqabi-ilu,* the son of my father-in-law, has laid claim upon the house and everything which had been sealed and bequeathed to me, and upon *Nabu-nur-ili,* (the slave) whom we had acquired from *Nabu-aḫe-iddina* for silver. I have brought it before you, make a decision."

The judges heard their words, they read the tablets and contracts which *Bunanitu* brought before them, and they caused *Aqabi-ilu* not to have power over the house at Borsippa, which had been bequeathed to *Bunanitu* instead of her dowry, over *Nabu-nur-ili,* whom she and her husband had bought for silver, or over anything of *Abil-Addu-nathan;*

Bunanitu and *Abil-Addu-amari,* by their tablets, they caused to be confirmed. *Iddina-Marduk* . . will receive the 2½ mina of silver which had been given towards the price of that house. Afterwards *Bunanitu* will receive the 3½ mina of silver, her dowry, and her share besides. *Nubta* will receive *Nabu-nur-ili,* according to the contracts of her father.'

The document ends with the names of six judges, two scribes and the following date: "Babylon, month Elul,[79] day twenty sixth, year ninth, *Nabu (-na'id,* king of Babylon)."[80]

Here the wife receives her dowry, valued at 3½ mina of silver, and, in addition, a share of the inheritance left by her deceased husband. On the other hand, if the wife dies childless, the dowry reverts to her father's house. "A man has given a marriage-portion[81] to his daughter and she has neither son nor daughter and fate has carried her off;[82] her marriage-portion returns to her father's house."[83]

The dowry[84] is to be distinguished from the husband's assignment to the wife.[85] In the Code this gift is called a *nudunnu,*[86] the details of which must be committed to writing. Thus, "if a man give to his wife field, garden, house, or goods and he deliver

[79] *Ululu.*

[80] Pinches, *The Old Testament in the Light of the Historical Records of Assyria and Babylonia,* pp. 462–463.

[81] *nudunnu.*

[82] *shim-ti ub-lu-ush.*

[83] *K.B.,* 4, 323; cp. *C.H.,* §163.

[84] *sheriqtu.*

[85] 'donatio inter virum et uxorem.'

[86] Cp. the Hebrew terms *nede* and *nadan* (Ezek. 16: 33), also *nudunya* of the Mishna.

to her a sealed deed, after (the death of) her husband, her children cannot make claim against her."[87] The wife, moreover, "shall receive her dowry and the gift[88] which her husband gave and deeded to her on a tablet and she may dwell in the house of her husband and enjoy (the property) as long as she lives." Obviously the recipient of a *nudunnu* has no absolute rights to such property but only a life interest. Failing a *nudunnu* the widow is entitled to a son's share of the goods: 'If her husband has not given her a gift, her dowry shall be given her in full, and, from the goods of her husband's estate, she shall take a share equal to that of a son.'[89]

It is noteworthy that in the later Babylonian contracts the *nudunnu* is converted into the *sheriqtu*:[90] "A wife, whose marriage-portion[91] her husband has received, who has no son or daughter, and fate has carried off her husband, shall be given from her husband's property the marriage-portion, whatever that was. If her husband has made her a gift, she shall receive the gift of her husband with her marriage-portion and take it away. If she had no marriage-portion, the judge shall estimate the property of her husband and, according to her husband's means, shall grant her something."[92]

No marriage was valid without a marriage-contract. 'If a man has taken a wife and has not executed a marriage-contract,[93] that woman is not

[87] *C.Ḫ.*, §150.
[88] *nu-du-na-am, C.Ḫ.*, §171.
[89] §172.
[90] Jeremias, *Moses and Ḫammurabi*, p. 10, note 1.
[91] *nudunnu.*
[92] Johns, op. cit., 72.
[93] *ri-ik-sa-ti-sha la ish-ku-un*, lit., "has not laid down her bonds."

a (legal) wife."[94] The rights of the newly-married wife are duly set forth in the wedding contract and protected by law. The nature of such a contract is best illustrated from a tablet belonging to the First Dynasty of Babylon. *'Awilia,* son of *Warad-Sin,* has taken *Naramtum,* daughter of *Sinatum,* to wife. *Ibi-Enlil,* the heir (and) elder brother, *Ilushu-ibnishu,* his brother, and *Ilima-abi,* their brother, *Awilia* has given to *Naramtum,* his wife, as sons. *Ibi-Enlil,* the heir (and) elder brother, *Ilushu-ibnishu,* his brother, and *Ilima-abi,* their brother, shall divide house, field, garden, female slave, male slave and the property that exists in the house of *Awilia,* their father, into equal parts after the eldest brother shall have taken his preference portion. When *Awilia* says to *Naramtum,* his wife: "Thou art not my wife," he shall pay a half mina of silver. When *Naramtum* says to *Awilia,* her husband: "Thou art not my husband," they shall set a mark upon her and sell her. When *Ibi-Enlil, Ilushu-ibnishu,* and *Ilima-abi,* their brother, say to *Naramtum,* their mother: "Thou art not our mother," they shall forfeit the property of *Awilia,* their father. When *Naramtum* says to *Ibi-Enlil, Ilushu-ibnishu* and *Ilima-abi,* her children: "Ye are not my sons," she shall forfeit the property of *Awilia,* her husband. . . . 2⅔ *gur* of grain, 6 minas of wool and . . . *qa* of oil *Ibi-Enlil,* the heir (and) elder brother, *Ilushu-ibnishu* and *Ilima-abi,* their brother, shall give annually to *Naramtum,* their mother, as sustenance. If a son will not give her the grain, oil, and wool installments as sustenance, he shall forfeit

[94] *C.H.,* 128.

the property of his father. In mutual agreement they have sworn by the name of the king."[95]

The estate of *Awilia* is to be divided among his sons who are required to pay an annual share of the produce to *Naramtum*, the latter having secured the rights of a mother over the sons of *Awilia's* former marriage by virtue of the rite of adoption. On the death of her husband the widow is free to marry again, if she so desires, in which case "she shall take the dowry of her father's house and the man of her heart may marry her."[96]

According to the Nabataean inscriptions the women of northern Arabia must have occupied a high social position. They might even own large estates and engage in trading pursuits.[97] Whether this implied the right of inheritance is doubtful. Before *Muḥammad's* time only warriors could inherit: "none can be heirs, who do not take part in battle, drive booty, and protect property."[98] That the women of Medina had no capacity for inheritance, at least so far as landed property is concerned, is in perfect agreement with the above principle, as well as with *ba'al* marriage, or marriage of dominion. In marriages of the latter type the purchase-price[99] is paid

[95] Poebel, *Babylonian Legal and Business Documents*, Series A, vol. VI, pt. 2, p. 36.

[96] *C.H.*, §172b. The *nudunnu* is reserved for the children of her former husband.

[97] Nöldeke, *Enc. Brit.*, eleventh edition, II, 284.

[98] Sura, 4: 8, 26.

[99] *mahr;* cp. Syriac *mahra:* "whatever the son-in-law gives to the parents of the bride."

to the woman's kin. With the rise of Islam, however, the *mahr* becomes the property of the woman, although at the same time a gift of some sort is insisted upon by *Muḥammad* and "be it only an iron ring or half his cloak." This change was rendered possible by the pre-Islamic custom of giving a *ṣadaq* or voluntary gift to a *mut'a* wife. In Islam both *ṣadaq* and *mahr* are used interchangeably in the sense of dowry. The dowry, the nature of which depended entirely on the social position of the suitor, constituted the most important part of a woman's identity.

As in Islam, so among the Arabs of *Hadramawt,* the *mahr* is handed over to the woman. In addition to this the bride receives from the bridegroom a wedding present, which is looked upon as her personal property.[100]

Though deprived by custom of the right of inheriting, women not infrequently accumulated considerable wealth. In an old form of divorce the husband says to his wife: "Begone, for I will no longer drive thy flocks to the pasture." The inference to be drawn from this is that some women must have been in possession of flocks and herds over which they had full control. *Ḥatim,* whose wife has great wealth in herds, must either take care of *Mu'awiya's* camels or be killed by his wealthy consort.[101] The wife of *Duraid ibn Ṣimma,* it seems, owns property of a similar nature. Addressing her husband, *Umm Ma'bad* says: 'I have fed thee with my bread over-

[100] Kohler, *Zeitschrift für vergleichende Rechtswissenschaft,* VIII, 257.

[101] *Ehe,* 467.

laid with curds; and I have come to thee as a she-camel grazing at will, not bound and as a virgin."[102]

How women came into the possession of flocks and herds remains an open question. It is not improbable that such a distribution of property has its origin in a law of descent through women, traces of which are met with by the side of patrilineal descent. The change from the maternal to the paternal system was a growth and not an instantaneous product.

Several instances are on record showing that in the days preceding Islam a woman's property is by no means limited to flocks, herds, and personal ornaments, but might also include valuable real estate holdings in trading centres like Mecca and Medina. She is the "possessor of the house."[103] *Ramla's* house in Medina was spacious enough to be used for hotel and hospital purposes by the prophet.[104] Before marrying *Muḥammad, Ḫadija*—so the traditionalists tell us—was engaged in a lucrative caravan trade. Not many years thereafter a house with an interesting history is presented to *Zainab* by *Ḫadija,* her mother. The ownership of houses by the individuals just mentioned may be due to the civilizing influence of commercialism. Another alternative open to us is to assume that these properties were not inherited but merely received as a gift from the parents or husbands of the women in question.

Under *Muḥammadan* law a wife receives a definite share of the inheritance in accordance with the

[102] *Ehe,* 467.
[103] Ibid., 444.
[104] Ibid., 467.

provisions of Sura 4:14: 'The women shall have a fourth of what ye leave, if ye die without issue; but if ye have children, then let them have an eighth of what ye leave, after paying your bequests and your debts.' The parents of the deceased receive a sixth of the estate in the event of a child surviving the latter; but if he dies childless 'and his parents (alone) inherit, then his mother shall have a third; if he have brethren, then the mother shall have a sixth.'[105]

By an extension of the principle, already considered,[106] to the female descendants of the patriarchal head, it becomes somewhat more intelligible why no allusion is made in pre-exilic literature to the property rights of daughters. The fact is they did not enjoy such rights until a late period in Israelitish history. In the older period of patriarchy daughters are really part and parcel of a man's property.[107] This would seem to follow from the Deuteronomic law with respect to the seduction of an unbetrothed virgin. The seducer "shall give unto the damsel's father fifty sheqels of silver and she shall be his wife."[108] But "if her father utterly refuse to give her unto him, he shall pay money according to the *mohar* of virgins."[109] The Hebrew term *mohar* designates, as we have seen, the marriage-price paid by the suitor to the father of the

[105] Sura 4: 12.
[106] Cf. p. 21.
[107] Ex. 21: 7; 22: 15–16.
[108] Deut., 22: 28–29.
[109] Ex. 22: 16.

bride. The offense, then, takes on the nature of damage done to the rights of private property, the indemnity in such a case being fifty sheqels of silver.[110]

Daughters may inherit only in default of sons.[111] To state the law in full as told in the priestly narrative,[112] it appears that a member of the tribe of Manasseh, named *Ṣelpaḥad,* died leaving five daughters but no sons. An appeal is made to the proper authorities for a readjustment of the law of succession according to which only agnates were entitled to the estate left by the deceased. The point is raised by the surviving members of the family: "Why should our father's name be withdrawn from among his 'family'[113] because he hath no son? Therefore give unto us a (landed) possession among the brethren of our father."[114] There is some force to the argument, for it soon leads to the promulgation of a general law to the effect that if a man die without male issue his daughter shall inherit the property. In the event of there being no daughter the brothers of the deceased shall be entitled to the succession,[115] the next in order being his paternal uncles[116] and the nearest blood relatives on the father's side,[117] provided they are the only survivors.

[110] Baentsch, *Ex.,* 200.
[111] *P.*
[112] Num. 27: 1–11.
[113] *mishpaḥa.*
[114] v. 4.
[115] v. 9.
[116] v. 10.
[117] v. 11.

This law is later supplemented by Num. 36:1–12 in order to keep intact the tribal possessions of Manasseh. The daughters of *Ṣelpaḥad* must not marry men of other tribes for "if they shall marry any of the sons of the (other) tribes of the children of Israel, then shall their inheritance be withdrawn from the inheritance of our fathers and added to the inheritance of the tribe to which they belong."[118] These objections are subsequently sustained by the lawgiver. In future the daughters of *Ṣelpaḥad* 'may marry whom they like,' i. e., of the tribe of Manasseh.[119] On the basis of this decision all heiresses are henceforth enjoined to marry within their own tribe for the purpose of preventing the family estate from passing to a family of another tribe.[120] From verses 11–12 we learn that the daughters of *Ṣelpaḥad* finally marry the sons of their paternal uncles.

Of all the Pentateuchal laws the law pertaining to the property rights of daughters is one of the latest.[121] Previous to the enactment of the present law only sons are recognized as heirs.[122] Benzinger's suggestion that the right of daughters to inherit, adverted to in *P.*, probably reflects an older custom, lacks all support.[123] The principle of agnation is too closely interwoven in the very warp and woof of early Israelitish arrangements to be thus set aside by what is clearly an innovation in the days of

[118] v. 3.
[119] v. 6.
[120] vv. 8–9.
[121] Smith, *Kinship*, 66.
[122] Deut. 21:15 f.; 25:5–10.
[123] *Heb. Arch.*,[2] 297.

the priestly writer.[124] It is entirely beside the point to refer to Job 42:15, which is confessedly late.[125]

Regarding the property rights of daughters in *Ḫammurabi's* day the law is that dowerless virgins shall have a son's share of the estate: "If a father do not give a dowry to his daughter, a bride, or devotee, after her father dies she shall receive, as her share in the goods of her father's house, the portion of a son, and she shall enjoy it as long as she lives. After her (death) it belongs to her brothers."[126] That the *sheriqtu*[127] of the Code actually takes the place of a right to share in the inheritance[128] is evident from the following enactment: "If a man do not present a dowry to his daughter, who is a concubine, and do not give her to a husband; after her father dies her brothers shall present her a dowry proportionate to the fortune of her father's house and they shall give her to a husband."[129]

There was nothing to hinder wealthy parents from giving landed property to their daughters, provided such grants were embodied in a written deed. One or two instances will suffice: '1200 *sar* of land, 53 *sar* of garden, beside the garden of *Yawi-ilu, Sin-rimeni* has presented to *Waqartu,* his daughter. *Kizatu* is the son of *Waqartu.* In the presence

[124] Baentsch, op. cit., 635.
[125] Nowack, *Hebräische Archäologie,* 348.
[126] *C.Ḫ.,* §180.
[127] 'dowry.'
[128] *aplutu,* 'sonship, heritage.'
[129] *C.Ḫ.,* §184; cp. §§180, 183.

of *Ishalish-ilu,* her brother.'[130] Possibly this was part of the woman's dowry, full payment having been withheld for a given number of years in accordance with the terms agreed upon in the original marriage-contract. In a document belonging to the reign of Nebuchadrezzar a mother waives claim to her property on condition that the beneficiary pay a corresponding annuity to her benefactress: '*Silim-Ishtar,* daughter of *Kurigalzu,* has of her own accord sealed and deeded her property in city and land, as much as there is, to *Gula-qa'ishat,* her daughter; and in addition five mina of silver, two servants and furniture, which she had given as *Gula-qa'ishat's* dowry to *Bel-usallim,* son of *Ziria.* As long as *Silim-Ishtar* lives, she shall enjoy the income of her property . . . The day that *Silim-Ishtar* dies, her property shall belong to *Gula-qa'ishat'.*[131] Why *Gula-qa'ishat* should inherit *Silim-Ishtar's* property is not clear. Perhaps she was the only child of her mother. Lacking a son *Silim-Ishtar* bequeaths the above property to her daughter in the form already mentioned.

Indications are not wanting to show that the daughters of the high-born mother probably received in addition to the dowry a small share of the estate. 'Ten *gan* of field in the *kare,* adjoining (the field of) *Aḫi-daani* and *Enkim-ilu, Kishunnu, Imqurrum,* and *Ilu-rabi,* her brothers, have given to *Ḫudultum,* daughter of *Inib-nunu,* as her share.' Here follow the names of four witnesses. The tablet is dated in the year of *Sumula-ilu,* one of *Ḫammurabi's* prede-

[130] Meissner, *A.A.R.* (*Der Alte Orient,* 1905), p. 20.
[131] Kohler and Peiser, *A.B.R.,* IV, p. 18.

cessors.[132] According to another source two brothers share the estate with a sister, the latter receiving as her portion one-third *sar* of house, adjoining that of her brother, a maid servant, a bed, and a chair. Furthermore, the brothers agree to add two-thirds *gan* of land and slaves to their sister's share on the day of her marriage.[133] In an early Babylonian inscription we are told that the 'inheritance portion of *Narubtum,* daughter of *Migir-Ellil*'[134] consists of ⅓ *sar* 5 *gin* of built house, 40 *sar* of upland garden and two slaves. Pointing in the same direction is the fact that *Amertum, Ibi-Ellil's* sister, is referred to in a manumission tablet of the First Dynasty as one of the heirs[135] of *Nannar-zimu* and *Dushubtum.*[136] So again the daughter of *Ramman-ushezib* is heir to 30 *qa* of cultivated lands awarded to her by the judges in a legal action of a later date.[137] Whether this property had been previously acquired by purchase or by inheritance is uncertain. Property of the former type might be inherited by the daughter of an officer, constable, or tax-gatherer.[138] The rights of daughters to such property were presumably restricted to a usufruct, the brothers or male descendants having a reversionary right to the property. *Burashu,* the daughter of *Ramman-ushezib,* for example, has a

[132] Pinches, op. cit., p. 181.

[133] Johns, op. cit., 163.

[134] *ḫa-la-ba Na-ru-ub-tum dumu-sal Mi-gir El-lil;* cf. Poebel, op. cit., p. 21.

[135] *ibila.*

[136] Poebel, p. 38.

[137] Kohler and Peiser, *A.B.R.,* II, 16; Marx, in *B.A.,* v. 4, p. 71.

[138] *C.Ḫ.,* 39.

life interest in the 30 *qa* of cultivated lands awarded to her by deed and not full rights to 'dispose of her portion for money. When *Burashu* dies the 30 *qa* of land shall belong to her son.'[139]

Failing a dowry the votary and the priestess of *Marduk* shall be given one-third of a son's share.[140] The votary of *Marduk,* in contradistinction to the devotees of *Ishtar,* could will her property to whomsoever she pleased.[141] Individuals of the latter class might even choose their lots: 'one *sar* of built house, beside the house of *Belaqu* and beside *Awel-Nannara,* is the share of *Erishtum,* the votary, daughter of *Ribam-ili,* which she has shared with *Amat-Shamash,* the priestess of the sun, her sister. The division is complete from the straw[142] to the gold.[143] They shall not bring claim against each other. Choice of *Amat-Shamash,* her sister.'[144] *Iltani,* another priestess of *Shamash,* has a share in her father's property consisting of ⅚ *sar* 6 *gin* of built house beside the house of *Sin-abushu-ildudu* and beside the house of the sons of *Adaiatu.*'[145] In a document of like import *Aiatu,* the daughter of *Ilurabi,* is named as the recipient of '1800 *sar* of land in the city of *Tub,* 5 sheep, a male and female slave, a house . ., and ⅓ *sar* of house . . . She may bequeath her property to one of her brothers who is

[139] Kohler and Peiser, loc. cit.

[140] §§181–182.

[141] §182b.

[142] Chaff, etc., cp. *Gilg. Ep.* VI, 104, 111; Muss-Arnolt, p. 789.

[143] The division is complete in every particular, i. e., from the least in value to the most valuable. Cf. Ungnad, *O.L.Z.* (1911), 107.

[144] Pinches, op. cit., 180.

[145] Meissner, *B.A.P.,* 85.

particularly fond of her and who honors her. By *Shamash, Aa, Marduk,* and *Ḫammurabi,* the king, they have sworn."[146] To all appearance *Aiatu* was a priestess. Otherwise it would be difficult to account for the independence of her position as over against the more restricted property rights of the average Babylonian woman.

The exclusion of females from inheritance previous to *Muḥammad* was based on the principle that none should inherit except warriors. At Medina and in other parts of Arabia daughters were not permitted to share in the estate of their respective fathers owing to an early predominance of patriarchy. To give a share of the inheritance to a daughter would result in the disintegration and alienation of paternal property as the tendency toward exogamy seems to have been exceptionally strong during this period. It is only when the old clan system of Arabia is brought to a point of collapse that we meet with a law of inheritance, which must be regarded as an innovation of the great reformer resting upon a changed conception of the family.[147] Of course, there was no reason, even before Islam, why daughters should not receive property in the nature of a gift, as in the case of *Zainab,* the daughter of *Ḫadija.* Under the paternal system all such donated property would ultimately revert to a mem-

[146] Meissner, *A.A.R.* (*Der Alte Orient,* 1905), p. 21.

[147] *Kinship,* 117; Kohler, *Zeitschrift für vergleichende Rechtswissenschaft,* v. 8, p. 246; Roberts, *Leipziger Semitistische Studien,* II, 6, p. 50.

ber of the patronymic group. In *Muḥammadan* law, however, daughters are to be provided for on the following basis: 'A male heir shall have as much as two females, and if there be female heirs above two, then let them have two-thirds of what (the deceased) leaves; and if there be but one, then let her have a half."[148]

The estate of a childless brother shall fall to his sister or sisters, as the case might be: 'If a man die and have no child, but he have a sister; then she shall receive half of what he leaves. But if there be two sisters; then they shall have two-thirds of what he leaves. And if there be more brothers and sisters; then one male heir shall receive as much as two females."[149]

As part of their husband's estate wives would naturally fall to the heir along with the rest of the property.[150] The right of primogeniture carries with it the distinction of receiving a double portion[151] of the entire paternal estate.[152] The possession of natural vigor on the part of the firstborn[153] together with the idea of sanctity[154] attaching to the firstfruits of manly strength may have had much to do with the growth of this custom in ancient Israel. How appropriate, therefore, that the eldest

[148] *Qur'an*, 4: 12 f.
[149] Ibid., 4: 175.
[150] Gen. 49: 3; 35: 22; 2 Sam. 16: 21 f.; 1 K. 2: 13 f.
[151] 2 K. 2: 9; Zech. 13: 8.
[152] Deut. 21: 17.
[153] Gen. 49:3; Ps. 78: 51; 105: 36.
[154] Smith, *Rel. Sem.*,[2] 465.

son should assume the family headship after his father's death.[155] What is especially needed in times of stress when the conditions of life are insecure and unstable, is the strong arm of some energetic leader capable of proving himself a man of the hour.[156] Natural qualifications such as these are indispensable where family-feuds are of almost daily occurrence. But with changing conditions the claims of primogeniture may sometimes be set at naught. It is notable, however, that many aberrations from the ancient custom are directly traceable to shrewdness and intrigues, and to pressure brought to bear upon the head of the household by the favorite wife.[157] The eldest son is not to be dealt with after this manner. A sharp protest is raised against the giving of his inheritance to the son of a favorite wife.[158] Ancient usage does not approve of it. At a subsequent period the birthright is conceived as transferable by a legal fiction from the firstborn to a son of greater worth.[159] However, we should not expect to find anything like real consistency between theory and practice in actual life.

In the face of an utter lack of historical material it is impossible to ascertain what responsibilities the eldest son was obliged to assume toward those less favored by nature. Unquestionably it was incumbent upon him to make some kind of provision for

[155] Gen. 27: 29; 49: 8.
[156] Cp. Book of Judges.
[157] Gen. 25: 30 f.; 1 K. 1: 11–13.
[158] Deut. 21: 15–17.
[159] 1 Chron. 5:1 f.

the other members of the household, particularly for the wives and daughters of the deceased.[160]

In the partition documents of the First Babylonian Dynasty the eldest brother receives a preference portion[161] in addition to a son's share of the estate: "*Ibi-Ellil,* the heir (and) elder brother, *Ilushu-ibnishu,* his brother, and *Ilima-abi,* their brother, shall divide house, field, garden, maid-slave, man-slave and the property that exists in the house of *Awilia,* their father, into equal parts after the eldest brother shall have taken his preference portion."[162] From a tablet of the Neo-Babylonian period we learn that the eldest son did not content himself with a share of the inheritance, the equivalent of a preference portion being secured to him by deed.[163]

The nature of the material at our disposal is such as to preclude the determination of the exact amount of the preference portion. According to an adoption document of early Babylonia provision is made for an equal division of the inheritance between two adopted brothers after the elder brother shall have taken his preference portion: "*Ili-idinnam,* the elder brother, and *Ilumati,* his brother, *Ea-idinnam,*

[160] Says a Jewish father of the post-biblical period in his testament: "The daughters shall dwell in my house and be nourished from my wealth (*nekasim*) until they are married." Mishna, *Ket.* 4: 12 (10).

[161] *sib-ta mu-nam-shesh-gal-la-shu,* "preference title on account of the position as eldest brother."

[162] Poebel, p. 36; cf. also no. 57; cp. Meissner, op. cit., 16.

[163] Kohler and Peiser, op. cit., III, 13.

son of *Ibku-Ishtar* . . has adopted as his children; his heirs he has made them. House, field, and all property they shall divide into equal parts after the elder brother shall have received his preference portion.'"[164] Inferentially the amount of the latter depended on the wealth of the testator and not upon any fixed standard of apportionment.[165] Thus, in one case the eldest brother, an official of high rank, takes a woman slave and her children as his portion;[166] in another the preference portion includes the office of a priest of *Ellil,* 36 acres of field, and a *zag-gula* bowl.[167]

On property which has been deeded to the eldest son by the mother a fixed annuity must be paid to the mother on pain of forfeiture. This obligation holds good as long as the mother lives.[168]

Apart from the rights of primogeniture, the principle was followed that sons should share equally in the patrimonial estate[169] as well as in the *sheriqtu* and *nudunnu* of their respective mothers.[170]

Since marital rights in pre-Islamic times were of the nature of heritable estate, the father's wives naturally reverted to the son along with his other possessions. Marriage with a father's wife under such conditions is strictly prohibited by *Muḥammad.*

[164] Poebel, p. 28.
[165] Contra Poebel, p. 26.
[166] Meissner, *A.A.R.,* 30; Johns, op. cit., 162.
[167] Poebel, 22.
[168] Kohler and Peiser, op. cit., III, 14.
[169] Poebel, nos. 23: 23; 43: 34; 16: 10; *C.Ḫ.,* §§165, 167.
[170] *C.Ḫ.,* §§171, 172.

It is surprising, however, that the law of primogeniture in so far as it has to do with the superior property rights of the firstborn should be passed by in silence by the prophet. The *Qur'an,* which agrees in many particulars with numerous Israelite institutions, apparently knows nothing of such a prerogative. While the argument from silence is never conclusive, the pronounced individualism of the Arabs as over against their Syrian and Babylonian kinsmen will probably offer a satisfactory explanation for the conspicuous absence of the institution of primogeniture in Arabia.

Finally it is to be noted that "the male heir shall receive as much as two females."[171] The inheritance of a childless sister shall revert to her brother.[172]

There is something unusually sacred about landed property inherited from the fathers as may be gathered from the answer given to King Ahab by Naboth, the Jezreelite. "Yahwe forbid," he exclaims, "that I should give the inheritance of my fathers unto thee."[173] The retention of the vineyard is a matter of conscience and religion. Possibly his ancestors were buried there and hence the property is inalienable. Naboth cannot consent to its disposal. To do so would be equivalent to an act of impiety. Moreover, the emphasis placed upon

[171] Sura 4: 12.
[172] Sur. 4: 175.
[173] 1 K. 21: 3.

the preservation of names once given to a parcel of ground may also be due to religious motives.[174]

Ancestor worship constitutes part and parcel of the religion of pre-Mosaic Israel. The custom seems to linger in the popular funeral rites of the masses, despite the opposition of Yahwism. Having appropriated the tithe of the third year to charitable purposes, it is incumbent upon every Israelite solemnly to declare before Yahwe that he had not been guilty of applying any part of the tithe to the dead. 'I have brought away the sacred (tithe) out of mine house, and I have given it to the Levite, and to the stranger, to the fatherless, and to the widow . . I have not eaten thereof in my mourning,[175] neither have I put away thereof, being unclean,[176] nor given thereof for (or to) the dead.'[177] The excavations at *Ta'anak,* and elsewhere, have brought to light numerous remains of crockery attesting the presentation of offerings to the departed. Some of the tombs thus excavated contained remnants of food intended for the dead.[178] A writer of the second century B. C. recommends that funeral offerings be continued. 'Pour out thy bread on the tomb of the just, but do not give thereof to the unjust.'[179] Ben Sira on the contrary would eliminate the custom: 'Of what benefit is the offering to the shade (of the departed)? Offerings of food placed upon the tomb

[174] Ps. 49: 11.

[175] Cp. Hos. 9: 4; Jer. 16: 7; Ezek. 24: 17, 22.

[176] Gesenius, *H.W.B.* (1905), 70.

[177] Deut. 26: 13–14. Stade, *G.V.I.,* I, 389; Schwally, *Das Leben nach dem Tode,* 25; Lods, *Croyance à la vie future,* 166.

[178] Benzinger, *H.A.,*[2] 128 f.

[179] Tobit, 4: 17.

are delicacies poured on a closed mouth."[180] The object of these offerings was to give sustenance to the spirits of the deceased 'and to win their favor."[181]

Closely associated with the cult of the dead is the practice of necromancy, which presumably had its origin in the period of Semitic heathenism. The spirits of the deceased were anciently regarded as possessing a knowledge of future events, and hence the name *yidde 'onim,* or knowing ones.[182] Thus in the well-known passage of 1 Sam. 28:7 f. the spirit[183] of Samuel is consulted by Saul through the medium of the so-called witch of Endor. Necromancy, however, implies the presentation of offerings partaking of the nature of sacrifices to the spirits consulted. 'I have spread out my hands . . to a people that provoketh me to anger continually; . . that sacrificeth in gardens, and burneth incense upon bricks; who sit in the graves, and lodge in the monuments."[184] According to primitive notions it would be idle to invoke the spirits of the dead without giving something in return, all such favors being placed on a reciprocal basis.[185]

The character of these offerings may be ascertained from the attribution of divinity to persons thus invoked, as in the case of 1 Sam. 28:13, where the spirit of the departed is called *elohim,* or god. On the death of Asa, moreover, the people 'made a

[180] 30:18–19.
[181] Charles, R. H., *Doctrine of a Future Life* (1913), 24.
[182] Lev. 19:31; 20:6; Isa. 19:3.
[183] *'ob.* Lev. 19:31; 20:6, 27; Deut. 18:11; Isa. 29:4.
[184] Isa. 65:2–4; cp. 8:19; 19:3. Cf. Duhm, ad loc.
[185] Lods, op. cit., 168.

very great burning for (or to) him."[186] This 'enormous burning' is not to be identified with cremation, as the Hebrews were averse to the custom. It clearly points to a form of sacrifice for the dead, and presupposes a process of deification.[187] From Ezek. 43:7–9 it appears that the sepulchres of the kings, situated in close proximity to the sanctuary of Yahwe, were the scenes of idolatrous practices, whereby 'they (the people) have defiled my holy name.' Thus it would seem that a certain degree of worship was paid to departed heroes and kings, as well as to deceased ancestors.

The alienation of the patrimonial estate in perpetuity was a serious matter. In a document of the First Dynasty a man named *Arad-Sin* brings suit against the sons of *Shamash-naṣir* who had sold a plot of ground to a merchant. 'The field which I have inherited from the house of my father, *Ibku-Shala* and his brother, the sons of *Shamash-naṣir,* have sold to *Ibni-Adadi,* the merchant. *Iddatu* and *Baṣiṣu,* the sons of *Ibni-Adadi,* . . were brought before the judges, and produced the deed of sale which *Eṭiru* and *Sin-nadin-shumi* had executed to *Shamash-naṣir* and *Ibku-Annunitu,* his son . . *Arad-Sin,* the son of *Eṭiru,* shall receive his house and add it to his field . . . Dated in the reign of *Ammizaduga.*"[188] The ancestral domain shall be restored to its rightful owner. Addressing *Sin-idinnam,*

[186] 2 Chron. 16:14; cp. 2 Chron. 21:19.
[187] Cp. Schwally, op. cit., 24.
[188] Meissner, *B.A.P.,* 41.

Ḫammurabi says: "In the matter of the *gan* . . . . land in the district of the town of *Dur-gurgurri,* the ownership of the land by *Ea-lu-bani* is ancient, for on a tablet is it assigned unto him. Thou shalt therefore give this land unto *Ea-lu-bani.*"[189]

A contract of the Neo-Babylonian period illustrates how carefully the hereditary rights were guarded. We shall quote it in full because of its bearing on the law of inheritance in Babylonia. "*Bel-kaṣir,* son of *Nadinu,* spoke to *Nadinu,* his father, thus: 'Thou sentest me to *Bit-turni,* and I took *Zunna*[190] as my wife, but she has not borne son or daughter. Let me adopt *Bel-ukin,* son of *Zunna,* child of my wife, whom she bore some time ago to *Niqudu,* son of *Nur-Sin,* her former husband, and let him be my son; record his adoption on a tablet, and seal and bequeath to him our revenues and our property, all there is, and let him be the child taken by our hands.' *Nadinu* was not pleased with the words which *Bel-kaṣir,* his son, had said to him. *Nadinu* had written on a tablet, 'No one whatever, at a future time, is to take their revenue or property;' he had bound the hands of *Bel-kaṣir,* his son, and had stated it in the deed thus: 'When *Nadinu* goes to his fate, then after him the son proceeding from the loins of *Bel-kaṣir* his son, who shall be born, shall take the incomes and properties of *Nadinu* his father. If a son proceeding from the loins of *Bel-kaṣir* be not born, *Bel-kaṣir* shall adopt his brother and rightful heir, and shall bequeath unto him the revenues and properties of *Nadinu,* his

[189] King, *The Letters and Inscriptions of Ḫammurabi,* III, 28.

[190] A widow.

father. *Bel-kaṣir* shall not adopt any other whatever, but he shall adopt his brother and rightful heir on account of the revenues and properties which *Nadinu* (has bequeathed to him) . . . . . Babylon, month *Shebaṭ*,[191] fifteenth day, year ninth, *Nabuna'id*, king of Babylon.'"[192]

According to Babylonian eschatology the soul's happy existence in the lower world depended on the amount of care given to the body of the departed. The abode of the dead is described as the 'land without return.'[193] Further, it is a 'place of desolation.'[194] Its inhabitants dwell in a region 'where dust is their nourishment, their food clay.'[195] Although separated from the body at death, the soul is conceived of as having earthly wants.[196] Special provision must be made by the descendants of the deceased for the proper maintenance of the soul in view of the dismal character of the realms of *Arallu*. Of the offerings made for the repose of the soul, libations of water were the most common.[197] One of the adoption documents of the Cassite period[198] contains the following:

[191] *Shabaṭu*.

[192] Pinches, *Hebraica* III, 19.

[193] *kurnugea*. Delitzsch, *Das Land Ohne Heimkehr* (1911), 36, n. 21.

[194] *Arallu*. For additional epithets applied to the nether world, see Jastrow, op. cit., 557 f.

[195] Quoted from the 'Descent of Ishtar.' *K.B.*, VI, 81; Jastrow, op. cit., 566.

[196] Langdon, *Babylonian Eschatology*, in *Babyloniaca* (1912), *Tome* VI, *Fasc.* 4, 197; Jastrow, op. cit., 598.

[197] Delitzsch, op. cit., 18; cp. Zimmern, *K.A.T.*,[3] 638 f.

[198] Clay, *T.A.N.*, XIV, 40.

'As long as *Ina-Uruk-rishat* lives,
Eṭirtum shall pay her reverence.
(When) *Ina-Uruk-rishat* dies, then
Eṭirtum, her (adopted) daughter,
Shall offer[199] the water libation.'[200]

Ordinarily, however, such libations were offered by the son on a fixed day, presumably coinciding with the anniversary of the decedent's death.[201] A form of malediction frequently employed in the *kudurru*[202] inscriptions was: "May he (*Ninib*) deprive him of his son, his water pourer . .[203] The son, the water pourer, may he take away from him . .[204] May he tear out his boundary stone, destroy his name, his seed, his offspring, his descendants from the mouth of men, and may he not let him have a son[205] and a pourer of water."[206] The shades of the departed which had been deprived of the proper burial rites and offerings were doomed to an existence without repose. As an act of vengeance

[199] Lit., 'pour out to her.'

[200] (11) *a-di* (*sal*) *I-na-Uruk*(*ki*)*-ri-shat ba-al-ṭa-tu*
(12) (*sal*) *E-ṭi-ir-tum i-pa-al-la-aḫ-shi*
(13) (*sal*) *I-na-U-ru-uk-ri-shat i-ma-at-ma*
(14) (*sal*) *E-ṭi-ir-tum marat-sa*
(15) *me-e i-na-aq-qi-shi*
See Ungnad, in *O.L.Z.* (1906), 534 f.

[201] Lods, op. cit., 161.

[202] 'boundary stone.'

[203] III R., 43, Col. IV, 20. Cf. Hinke, *A New Boundary Stone of Nebuchadrezzar* I, 62, 291.

[204] Susa, 3, VII, 9 f.

[205] *aplu u naq me.* There was also a special class of priests called *naq me*, or pourers of water.

[206] London, 102, II, 15–19.

Ashurbanipal destroys the graves of the kings of *Elam,* thus compelling the disentombed shades to wander restlessly: 'I destroyed the sepulchres of their kings . . I carried their bones to Assyria. Upon their spirits[207] I laid restlessness and kept from them food[208] and water-libations.'[209]

As in Israel, so in Babylonia, necromancy constitutes an essential part of the cult of the dead. There is the *mushelu,* or necromancer, the priest who raises the 'spirit' of the dead, and the *sha'ilu,* the 'inquirer' of the dead. The nether world, or *shu'alu,* "is a place of inquiry,[210] and the inquiry meant is of the nature of a religious oracle. The name, accordingly, is an indication of the power accorded the dead, to aid the living by furnishing them with answers to questions, just as the gods furnish oracles through the mediation of the priests."[211]

The shade of the departed may be called upon to forecast the future, as related in the classical instance of the *Gilgamesh Epic,* where the spirit of *Eabani* appears on behalf of *Gilgamesh, Nergal* having granted the request of the hero. The god of the nether world 'opened the hole of the earth,

[207] *ekimmu,* 'shade.'

[208] *ki-is-pi-shu-nu.*

[209] *naq me.* Rassam Cylinder, VI, 70, 73–76. Cf. *K.B.,* v. II, 207. "The one whose spirit (*ekimmu*) is not cared for by any one, . . he is consumed by gnawing hunger, by a longing for food. What is left on the street, he is obliged to eat." *Gilg. Ep.,* XII, col. VI, 9, 11–12. Jastrow, op. cit., 512. Cp. *K.B.,* VI. 265.

[210] According to Margoliouth *shu'alu* may also mean 'hollowed out place.' Cf. *Ancestor Worship (Babylonian) and Cult of the Dead,* in *Encyclopedia of Religion and Ethics,* I, 440.

[211] Jastrow, op. cit., 559.

and let the *utukku*[212] of *Eabani* come forth out of the earth like a wind.'"[213]

In the legends of Babylonia, as well as in the literature of historic times, we occasionally meet with the determinative for god,[214] prefixed to the names of popular heroes and kings. Thus *Gilgamesh* and others are among those deified. In the case of *Parnapishtim* and his wife deification is effected prior to their entrance into *Arallu*. "Hitherto *Parnapishtim*[215] was human, but now *Parnapishtim* and his wife shall be gods with us."[216] As to the deification of early Babylonian kings, it is interesting to note that "the names of *Dungi* and *Gudea* are written on tablets that belong to the centuries immediately following their reign,[217] with the determinative that is placed before the names of gods. Festivals were celebrated in honor of these kings, sacrifices were offered to them, and their images were placed in temples. Again, *Gimil-Sin*,[218] of the second dynasty of Ur, appears to have been deified during his lifetime, and there was a temple in *Lagash* which was named after him."[219] From the deification to the worship of the persons concerned is but a short step. Sacrificial offerings presented in their honor would be an inevitable result. And

[212] 'shade,' 'demon.'

[213] *Gilgamesh Epic*, Tablet XII, Col. III, 27–28, in *K.B.* Cp. Jastrow, op. cit., 511 f.

[214] *ilu*.

[215] The Babylonian Noah.

[216] Jastrow, op. cit., 505.

[217] Third millennium B. C.

[218] About 2500 B. C.

[219] Jastrow, op. cit., 561.

we would go a step further and say that the offering of sacrifices to deified kings involves an element of ancestor worship. "In paying honor to deified kings and other great personages, the sons and other descendants would both naturally and in accordance with an established rule take the lead, and the people generally would share in the celebrations, so that we have here instances firstly of ancestor worship in the strict sense of the word, and secondly in its wider, if looser, signification as homage paid to the departed kings and fathers of the people."[220] Says Ashurbanipal, king of Assyria,[221] 'I have established, for the shades of the kings, my ancestors, meat offerings and water libations, which had fallen into desuetude. I have done good to gods and men, to the living and the dead.'[222] The same king takes pleasure in relating that he slew the surviving murderers of Sennacherib in the very place where they had assassinated his grandfather: 'even there I now slew those people as a funeral sacrifice[223] for him.'[224] The word *kispu*, it may be noted, not only applies to sacrifices offered to the infernal gods and deified mortals, but also to offerings made to the dead. We are, therefore, justified in assuming a close affinity with sacrifices proper in the above quotation where the term occurs.[225] In another passage Ashurbanipal "speaks of visiting the graves of his ancestors.

[220] Margoliouth, loc. cit.

[221] B. C. 668–626.

[222] *K.B.*, v. II, 262–263.

[223] *kispu*.

[224] i. e., for Sennacherib. Rassam Cylinder, Col. IV, 70 f. Cf. Tiele, in *Z.A.*, V, 305; Lods, op. cit., 162.

[225] Ibid., loc. cit.; cp. Muss-Arnolt's *Dictionary*, 417.

He appears at the tombs with rent garments, pours out a libation to the memory of the dead, and offers up a prayer addressed to them.''[226]

That there was a strong disinclination on the part of the Arabs to alienate hereditary property is indisputable.[227] To begin with, the disposal of the ancestral domain to a stranger is well-nigh out of the question as each family generally had, in a portion of the field best suited for the purpose, its own sepulchre.[228] Where the popular religion of a people concerns itself with the cult of the dead, as among the Arabs, the rules of piety would act as a safeguard against the alienation of the family estate by the heirs of the deceased.

There is an allusion to ancestor worship in a verse attributed to *Ḥassan,* the poet.[229] Libations of water and other liquids are brought to the grave in order to quench the thirsty soul of the departed.[230]

Although the offering of bloody sacrifices to the dead is discountenanced by the *Qur'an,* the custom survives in the popular usage of modern Arabia in the form of funeral sacrifices offered under the pretext of celebrating the annual sacrifice on Mount *'Arafa* authorized by the *Qur'an.*[231] It is worthy of observation that in the case of persons who are unable to make the pilgrimage to Mecca the sac-

[226] Jastrow, op. cit., 605.
[227] See below, p. 84.
[228] Cp. Goldziher, *Muh. Stud.,* II, 308 f., 351.
[229] Wellhausen, *R.A.H.,* 163.
[230] Ibid., 161.
[231] Lods, op. cit., 163.

his maid bear him children, and the father during his lifetime say to the children which the maid bore him, "my sons," and reckon them with the sons of his (legal) wife, after the father dies the children of the wife and the children of the maid shall share equally.'[241] But it is reserved for the wife's sons to apportion the shares and to make their own selections.[242] If not acknowledged by the father in the above manner, the maid's children do not share in the estate. On the father's death, however, the maid and her children shall obtain their freedom.[243] In another document only the eldest son of a concubine is recognized by the father: '*Shaḫira* together with (his wife) *Belisunu* has taken *Azatu* (a maid) and she had five children. Of the five children which *Azatu* bore *Shaḫira, Shaḫira* acknowledged *Yamanu,* his eldest son. In future *Azatu* and her brothers shall not make claim against *Shaḫira.* By *Shamash, Aa, Marduk* and *Ḫammurabi* they swore.'[244]

The *iqrar*[245] *of Muḥammadan* jurisprudence is analogous to an acknowledgment of parentage on the part of a Babylonian father.[246] The person thus acknowledged may inherit together with all the other heirs of the acknowledgor, no distinction being made between the son of a legitimate wife and the son of a concubine.

[241] *C.Ḫ.*, §170.
[242] §170b.
[243] §171.
[244] Meissner, *A.A.R.*, p. 26.
[245] 'acknowledgment.'
[246] Roberts, op. cit., II, 6, p. 55; Syed Ameer Ali, op. cit., II, 215 f.

CHAPTER III

AGNATION

If a man die without male issue, his daughter shall inherit the property.[1] The law of succession as formulated by the priestly legislator distinctly provides that the inheriting daughters must marry within their own tribe.[2] It will not be too venturesome, perhaps, to find in this a compromise with a much older view according to which only the nearest agnate was entitled to the succession.[3] In accordance with the earlier custom the brother of the deceased has the first claim to the estate. Failing a brother, the paternal uncle and the nearest relative on the father's side are next in order.[4] But the right of inheritance also involves the duty of levirate marriage, especially in cases where the elder brother dies without leaving a son to perpetuate his name. The surviving brother is required to marry the childless widow 'and raise up seed to his brother.' By the operation of a legal fiction the firstborn son of this union succeeds to the name and estate of the deceased.

The earliest reference to levirate marriage is found in the story of Judah and Tamar.[5] Judah, we are told, has three sons, viz. 'Er, Onan, and Shelah.[6]

[1] Num. 27: 1–11; 36: 1–12.
[2] Num. 36: 6–8.
[3] Stade, *G.V.I.*, I, 391; Baentsch, op. cit., 696.
[4] Num. 27: 10 f.
[5] Gen. 38.
[6] vv. 1–5.

His firstborn becomes the husband of Tamar but dies without issue. The duty of raising up seed to the deceased devolves upon Onan who is by no means favorably disposed toward a custom, which, if carried out, would deprive him not only of his own offspring but also of the inheritance of his brother.[7] But since he dare not openly defy the sanctity of the obligation resting upon him, he must resort to secret means in order to defeat the purpose of the levirate.[8] After a time Onan dies and only Shelah remains. And now Judah, prompted by superstition and fear, intervenes and Tamar is sent home to her family on the pretext that Shelah had not as yet reached manhood.[9] To judge from the sequel, however, Tamar is not to be deceived in this way. As a woman of initiative she cannot submit any longer to the wrongs heaped upon her by the family of her husband. Some means of redress must be found. She owes it to herself for she is a childless widow. Then again, her motive is a religious one. Her future conduct will be largely determined by considerations of piety toward 'Er deceased without male issue. All that is needed is a suitable opportunity and Tamar will have reached her goal. In the end Judah confesses himself in the wrong. 'She is in the right as against me,' he declares; 'why did I not give her to Shelah my son!'[10]

The duty of levirate marriage devolving upon Shelah is performed by his father. Some scholars

[7] Gunkel, *Gen.*, 373.
[8] vv. 8–10.
[9] v. 11.
[10] v. 26.

would hold that the obligation laid upon brothers by the institution of the levirate might also be extended to the father-in-law of the childless widow.[11] Gunkel, on the other hand, insists that there is every indication in the narrative to the contrary.[12] Judah's relations to Tamar are of an exceptional nature and therefore hardly typical of the age under consideration.[13]

In the well-known passage of Deuteronomy[14] the duties of the levirate are restricted to brothers dwelling together on the same paternal estate. This limitation is to serve a twofold purpose,—the perpetuation of a man's name and the preservation of family property.[15] No provision is made in the law to insure its effectual application in every instance. It tacitly assumes that public opinion is no less a weapon in dealing with offenders than the imposition of a heavy fine. Should a man be guilty of evading the law, "the elders of his city shall call him and speak unto him. But if he step forth and say, I do not wish to take her, then shall his brother's wife draw nigh unto him in the presence of the elders and loose his sandal from off his foot and *spit in his face;* and she shall answer and say, So shall it be done unto the man that doth not build up his brother's house. And his name shall be called in Israel, the house of the unsandalled one."[16] The removal of a man's sandal by the contemned sister-

[11] Benz., *H.A.*,[2] 288; Bewer, in *A.J.S.L.*, XIX, 143.
[12] Gen. 38: 16, 26.
[13] Gunkel, op. cit., 374.
[14] 25: 5–10.
[15] Deut. 25: 6, 9.
[16] 25: 8–10.

in-law signifies that he has to forego his right of inheritance to the property of the deceased.[17] This is but the first step in the humiliating procedure, for, be it observed, such a man is not permitted to remove his own sandal in token of his renunciation of the rights and privileges formerly enjoyed by his elder brother.[18] The next and final step, which marks the climax of the entire ceremony, brings open shame to the unwilling brother-in-law. He has disgraced himself and his family in the eyes of the public by refusing to take upon himself an obligation which affection should have made dear to him. The recollection of his unbrotherly act shall cling to him, for his name has become a mere by-word and a term of reproach.

Before taking up the remaining phases of the levirate it will be well to adduce further material by way of elucidation of what is undoubtedly an ancient custom. An instructive example is found in Ps. 60:10 (108:9), where the God of Israel is introduced as saying: 'Upon Edom will I cast my shoe.' What the psalmist has in mind is the appropriation of the land of Edom by the Israelites. To cast the shoe upon an object is to take possession of it. Ruth 4:7 admits of a similar interpretation. If a transfer of property was to be effected, the seller took off his sandal, and gave it to the buyer; 'and this was a testimony in Israel.' The transaction thus acquired legal validity.

We again turn to the levirate. That all the essential characteristics of the institution were known to

[17] Steuernagel, *Deut.*, 92.
[18] Dillmann, *Deut.*, 358.

the author of the book of Ruth may be gleaned from Naomi's reply to her daughters-in-law. 'But Naomi said, Turn back, my daughters! Why will ye go with me? Have I yet sons in my womb who might become your husbands? Turn back, my daughters, go your way, for I am too old to have a husband. If I should say, I have hope, if I should even have a husband tonight, and should also bear sons, would ye therefore wait until they were grown up? Would ye therefore lock yourselves in and remain unmarried?'[19] All things being equal a brother-in-law yet unborn might even be claimed by the surviving widow in order that the 'name of the dead be raised upon his inheritance.' As the text now stands, it appears that the obligation which rests upon the *goël* does not materially differ from that of a *levir*.[20] How this is to be reconciled with verses 11 and 21, where the offspring is reckoned as of the line of Boaz and not of Mahlon, is a problem which still awaits a satisfactory solution.[21] The best way out of the difficulty is to assume that the marriage of Boaz and Ruth is not a levirate marriage at all.[22] Boaz redeems the estate of Elimelech and takes Ruth not as *levir* but as *goël*. Bewer remarks (ad loc.): "The *goël* has the right and duty to redeem his deceased kinsman's property, including wife, but he has not the obligation of the levirate marriage."

The levirate, then, is losing ground. Before the exile only agnates could be heirs. After that event

[19] Ru. 1: 11–13.

[20] Ru. 4: 5–6, 10.

[21] Nowack, *H.A.*, 346.

[22] McLennan, *Anc. Hist.*,[2] 178; Driver, *Deut.*, 285; *A.J.S.L.*, XIX, 146 f.

daughters are invested with property rights in the case of a man dying without male issue.[23] With such a modification in the law of inheritance the levirate necessarily loses some of its former importance. Leviticus[24] seeks to destroy it altogether by forbidding marriages between persons closely related to each other.[25] This, of course, precludes marriage with a brother's wife.[26] But in spite of the priestly code the custom continued to exist[27] until post-Talmudic times.[28]

The institution just described is an interesting survival of an archaic custom once prevalent among the Hebrews and other races.[29] Its origin and primitive purpose were no longer properly understood by the Hebrews of the historical period as evidenced by the narratives themselves. Stress is laid on the necessity of perpetuating a man's name deceased without male issue and of keeping the estate within the family group. Does a man's Ego continue to live in his reputed offspring simply because he is the bearer of his name? It will be remembered that the name is looked upon by the ancients (Semites) not as an abstraction, as with us, but as the essence of the thing designated by it.[30] To die without offspring is a calamity for the reason that the deceased is thereby deprived of the only medium by which he

[23] *P.*

[24] *H.*

[25] Lev. 18: 6.

[26] widow. Lev. 18: 16; 20: 21.

[27] Matt. 22: 24 f.

[28] Baentsch, op. cit., 394.

[29] i. e., among the people of Madagascar and among the Calchaquis of Brazil; cp. also the Laws of Manu.

[30] Cp. Isa. 30: 27; Deut. 14: 23, etc.

might continue his post-mundane existence.[31] Under no circumstances must a man's name become extinct. From what has already been said it follows that the motive of 'raising up the name of the dead upon his inheritance' is primarily of a religious character. If this is correct, the question of inheritance could hardly have given rise to the levirate. Religion antedates even the most primitive conception of property.

The subject of origins is of speculative interest and does not immediately concern us here. But in a discussion of this nature one cannot confine himself to purely objective standards. And for that reason it might be well to indicate, in passing, what others believe to be the origin of levirate marriage.

Nowack[32] would explain the custom as a relic of matriarchy. The existence of polyandry in a number of cultural areas, including the South Arabian, has given rise to the theory that the levirate system is a survival from a previous polyandric condition of society.[33] Stade, however, inclines to the view that the institution of levirate marriage grew up in connection with ancestor worship. Only sons[34] are capable of carrying on the family cult, the continuance of which depends upon the raising of seed to the deceased kinsman, that is, if he should die without male issue.[35] Finally it has been urged on the

[31] Bertholet, *Ruth,* 57; cp. Ruth 4: 10.

[32] Op. cit., 348.

[33] McLennan, op. cit., 172–182; Smith, *Kinship,* 145 f., 272; Wellhausen, *Ehe,* 460, 474, 479; Buhl, *S.V.I.,* 28 f.

[34] Agnates.

[35] Stade, op. cit., I, 393 f., Gunkel, op. cit., 373; Baentsch, 394, 636; Benzinger, op. cit., 113; cp. Fustel de Coulanges, *Ancient City,* 86.

basis of Deut. 25:6 and Ruth 4:10 that the desire to maintain the integrity of the estate would eventually lead to the levirate. According to Gunkel this merely represents the attempt of a later age to explain an institution no longer clearly understood. It appears that the evidence points to a religious rather than an agrarian origin of so complex a phenomenon as the levirate.[36]

As regards the levirate before Islam, the polyandrous condition of society in many parts of the Arabian peninsula would probably furnish a fertile soil for such an institution.[37] Among the Yemenites small fraternal groups, or families, lived together under the headship of the eldest brother who was also in possession of superior conjugal rights.[38] *Buḫari* relates that a sept of less than ten men had one wife in common, and that subsequently to the birth of a child all the members of the group were summoned together by the wife for the purpose of designating one of their number as the father of the child.[39] Robertson Smith is of opinion that the levirate of Deut. 25:5 f. goes back to a similar type of marriage in which a small group of brothers dwelling together on the same estate had a sort of common property in the wife.[40] But the fact that

[36] Cp. Charles, op. cit., 26.

[37] Benzinger, op. cit., 288.

[38] So Strabo, XVI, 4: 25; cp. *Kinship*, 158.

[39] Wellhausen, op. cit., 460.

[40] Caesar speaks of a similar practice among the British Celts: "Ten and even twelve have wives common to them, and particularly brothers among brothers." *D.B.G.*, V, 14.

the child was definitely assigned to one of the members of the group may be regarded as an initial stage of patriarchy.[41]

The levirate appears to have been unknown in Babylonia. When first emerging into the light of history the Babylonians had passed beyond that stage where the *yabam*[42] marries the childless widow to the end that the decedent's name might be perpetuated.

[41] Wellhausen, op. cit., 461.
[42] 'Brother-in-law.'

CHAPTER IV

THE *Goël*, OR NEXT OF KIN

In default of sons or brothers the *goël*, or next of kin, inherits the property of the deceased. There is sufficient evidence to show that the right of inheritance sometimes involved the duty of marrying the childless widow. For this reason it may be necessary to assume an ancient connection of the *ge'ulla* with the levirate.[1]

The above term has a most interesting history. *Goël* signifies "the avenger." If a fellow clansman is slain by an outsider, whether voluntarily or involuntarily, the duty of blood-revenge devolved upon the person standing nearest to the dead, who is known as 'the avenger of blood.'[2] To avenge the blood of a kinsman is a matter of family honor. The honor of the kin must be upheld and vindicated, whatever the cost. Thus the duty of blood-revenge is merged into that of a vindicator of family rights. It is quite patent that among the latter we also find the right of inheritance.

On the eve of the destruction of Jerusalem by the Chaldeans Jeremiah receives a visit from his cousin of Anathoth, who wishes to sell some property.[3] The proximity of Anathoth to the Judean capital in those trying times may have been responsible for

[1] Cf. Jastrow, *Avenger, Kinsman, and Redeemer*, p. 6.

[2] 2 Sam. 14: 11; Deut. 19: 6, 12; Num. 35: 19, 21, 25, 27; Josh. 20: 3, 9. Where blood has been shed accidentally, the murderer may flee to one of the cities of refuge especially set aside for the purpose. Deut. 19: 1–3, 7–10; Num. 35: 9–29; Josh. 20.

[3] Jer. 32: 6–15.

the financial embarrassment on the part of Hanameel, detachments of the besieging army having repeatedly entered his native town in quest of provisions for the Chaldean army. At all events he calls upon the prophet to buy his plot of ground in the vicinity of Anathoth. Jeremiah, as the chief agnate, has the right of purchase to the estate. Indeed, it is his duty to buy the land before it goes into strange hands. This is borne out by the Hebrew. *Mishpaṭ hagge'ulla* of verse 7 really refers to the right[4] of preemption rather than the right of redemption, the property not having been previously sold to a third party.[5] If Hanameel die without issue, Jeremiah would by reason of his close relationship be the only legitimate heir to the entire estate. "And Hanameel mine uncle's son came to me in the court of the prison—and said unto me, Buy my field, I pray thee, that is in Anathoth . . .; for the right of inheritance is thine and the right of preemption is thine."[6] The purchase is made in keeping with all the legal requirements of the time. A deed is drawn up by the contracting parties; witnesses are called; and in their presence the money is placed on scales and weighed, full weight being insisted upon in every business transaction. According to verse 10 the deed was already sealed when signed by the witnesses, in which case the names were probably written on the outside of the sealed copy to avouch the fact that it was properly sealed.[7] This, of

[4] duty.

[5] Cornill, *Jer.*, 360; Giesebrecht, *Jer.*,[2] 176.

[6] v. 8.

[7] Giesebrecht, op. cit., 177.

course, raises a somewhat difficult question, e. g., what was the nature of the document, or purchase-deed of our text? The Massoretic text evidently speaks of two copies, 'the sealed and the open.'[8] The Septuagint, on the contrary, refers to only one copy.[9] In verse 11 'the commandment and the stipulations' is probably a gloss. *Et-haggaluy* is likewise omitted in the Greek. Of the omissions in verse 14 אֶת־הַסְּפָרִים הָאֵלֶּה וְאֶת־הֶחָתוּם, and הַזֶּה (immediately after הַגָּלוּי) are the most important. In place of וּנְתַתָּם the Greek has וּנְתַתָּה and יַעֲמֹד instead of יַעַמְדוּ. The LXX reads: *οὕτως εἶπε κύριος παντοκράτωρ λάβε τὸ βιβλίον τῆς κτήσεως τοῦτο (καὶ τὸ βιβλίον τὸ ἀνεγνωσμένον) καὶ θήσεις (αὐτὸ) εἰς ἀγγεῖον ὀστράκινον ἵνα δια μείνῃ ἡμέρας πλείους.* The expression *καὶ τὸ βιβλίον τὸ ἀνεγνωσμένον* arouses suspicion.[10] It may have been taken over from a copy of the Hexapla and then added to the original translation on the basis of the M. T. If the LXX reading may be taken as a safe guide, the original Hebrew text would read as follows:

כה אמר יהוה צבאות קח את ספר המקנה הזה ונתתה בכלי־חרש למען יעמד ימים רבים "Thus saith Yahwe of hosts: take this purchase-deed and put it in an earthen vessel that it may continue many days." Stade maintains that there was only one copy of the contract which consisted of two parts. A portion of the document, containing all the necessary data relating to the purchase, was folded up and sealed, after which the witnesses wrote their names on the

[8] vv. 11, 14.
[9] 11, 12, 14.
[10] Cornill, op. cit., 363; Duhm, B., *Jer.*, 265.

remaining portion which was left open.[11] A similar distinction is made in the case-tablets of ancient Babylonia as well as in the *scriptura interior* and *exterior* of the Roman contracts.[12] The open copy could be readily used for ordinary reference and the one that was sealed must only be appealed to in cases of dispute. We must now seek an explanation for the additional information furnished by the M. T., which is wanting in the LXX. These additions evidently belong to a time when duplicate copies of real estate transactions were required by custom. The open[13] deed would then be a separate document, or duplicate, which could be shown whenever needed.[14]

Jeremiah greets this opportunity of buying his cousin's property as a providential token of the final restoration of those who are about to be exiled, for "houses and fields and vineyards shall again be bought in this land."[15] The amount paid for the field was seventeen sheqels of silver.[16] Why so trifling a sum was paid is not stated. An attempt is made by some expositors to show that money possessed a much greater purchasing power in ancient Israel than at a later period. A wandering Levite, for example, agrees to remain in Micah's house and become his priest for 'ten sheqels of silver a year, in addition to a complete suit of apparel and his living."[17] David buys the threshing floor of Arau-

[11] *Zeitschrift für alt-testamentliche Wissenschaft,* 1885, 176.
[12] Duhm, B., *Lit. Centralblatt* (1904), 875.
[13] public(?).
[14] Duhm, op. cit., 265; Cornill, op. cit., 362.
[15] v. 15.
[16] About eleven dollars.
[17] Judg. 17: 10.

nah, including oxen and implements, for fifty sheqels of silver.[18] Cornill[19] interprets *bimḥir* to mean the full value of the property. But this is somewhat doubtful. The area is an extensive one. And it is safe to say that no one but the king himself could succeed in making such a purchase. In 1 Chron. 21:25 David pays six hundred sheqels of gold for the same site. The Chronicler seems to have multiplied the original amount by twelve in accordance with the idealizing tendency of his own age. Genesis 23 contains an interesting account of Abraham's purchase of the cave of Machpelah. Granting the force of the arguments brought forward by scholars relative to the composition of the narrative in its present literary form,[20] it does not follow that the details are anything but a transcript from real life. Abraham—so the story runs—enters into negotiations with the Hittites of Hebron for a suitable plot of ground to bury his dead. His request is met with politeness and formal courtesy; the best of their sepulchres will be placed at his disposal, if he so desire. It will be observed, however, that this expression of goodwill, later repeated by Ephron, the Hittite, is a necessary prelude to any oriental[21] business transaction. Accordingly, the suggestion of a gift is tactfully ignored by the sojourner in Hebron, thus betraying a thorough acquaintance with the customary mode of procedure in such matters. And Abraham "spake unto Ephron in the

[18] 2 Sam. 24:24.
[19] *Jer.*, 361.
[20] *P.*
[21] Semitic.

presence of the people of the land, saying, But if thou (wilt give it), I pray thee, hear me: I will give thee money for the field; take it of me, and I will bury my dead there."[22] Ephron now signifies his willingness to become a party to the transaction by naming his price with the affectation of generosity so characteristic of business methods in the East.[23] "Four hundred sheqels of silver, what is that between me and thee?" Bars of silver to the value of four hundred sheqels are then placed on scales, weighed in the presence of the afore-mentioned witnesses, and the bargain is closed. The wording of verses 17–18 is in all probability a good illustration of contemporaneous legal usage in Israel. "And the field of Ephron, which was before Mamre, the field and the cave which was therein, and all the trees that were in the field, that were in all the borders round about, were made sure unto Abraham for a possession in the presence of the children of Heth, before all that went in at the gate of the city." Unfortunately nothing very definite is learned from this passage as to the exact dimensions of the field here in view. The origin of the present narrative and the author's interest in the purchase of this ancient burial-place are also problematical.[24] Mention is also made of the purchase of a parcel of

[22] Gen. 23: 13.

[23] "The peasants will often say when a person asks the price of anything which they have for sale, 'Receive it as a present:' this answer having become a common form of speech, they know that advantage will not be taken of it; and when desired again to name the price, they will do so, but generally name a sum that is exorbitant." Lane, *Mod. Eg.*,[5] II, 13 f.

[24] Gunkel, op. cit., 237, 249 f.; Skinner, *Gen.*, 334 f.

ground in Shechem by one of the patriarchs.[25] The *qeśiṭa,*[26] however, is an unknown quantity. It is impossible, therefore, to arrive at any definite conclusion with regard to the value of landed property in ancient Israel.

The contract at Machpelah between Abraham and Ephron the Hittite bears some likeness to the contracts of ancient Babylonia, of which the following will serve as a good illustration: '14 *gan* of field[27] by the crossing, in the upper district of *Tenu,* beside *Qaranu* . ., and beside *Ilimidi,* the front side (adjoining) the road to *Ashtaba,* the other front side the irrigation plant of *Tenunam, Ilushu-bani* has bought from *Nannar-idinna* and *Sin-bani,* his brother, the sons of *Sin-abu-shu,* for its complete price. He has paid the money . . . They are content. They shall not say, 'We have not received the money'—they have received it before the elders. At no future time shall *Nannar-idinna* and *Sin-bani* make claim upon the field. By *Shamash, Marduk* and *Zabium* (the king) they swore.' Nine witnesses.[28]

It will be noted that the boundaries are stated with greater precision in this document than in the transaction at Hebron. The same observation holds good concerning the sale of '12 measures of date-palm plantation, beside the plantation of *Rish-Shamash,* and fronting the property of *Girum.*'[29]

[25] Gen. 33: 19; Josh. 24: 32.

[26] LXX and Vulg: 'lamb.'

[27] *eqlu* (*eqlim*), a cultivated (irrigated) plot of ground.

[28] Daiches, *Altbab. Rechtsurkunden aus der Zeit der Ḫammurabi-Dynastie,* in *Leipziger Sem. Stud.,* I, 2, p. 38, no. 5.

[29] Pinches, op. cit., 237.

Land values in Babylonia were usually determined by the location and quality of the soil.[30] Accordingly '6 acres[31] of *gug-she* field, in the field *Till-Sin,* the front side (adjoining) the canal *Abarri,* the other front side the canal *Baikum,* with the long side adjoining *Sin-ḫazir,* the builder,' are sold for 12½ sheqels of silver.[32] In another contract tablet of the First Dynasty the sum of 40 sheqels[33] is paid for 6 *gan* of field.[34] The highest price recorded in these documents is 4 minas of silver: '5 *gan* of field in *Ible,* beside the field of *Sin-idinnam* and beside the field of *Abba-ḫibum, Lamazi,* the daughter of *Nakarum,* has bought from *Amat-Shamash,* the daughter of *Sin-ilu;* and as its full price she shall pay 4 minas of silver. Her transaction is complete; she is content. At no future time shall the one make claim against the other. By *Shamash, Aa, Marduk* and *Ḫammurabi* they swore.'[35]

Where the purchase-money was not paid down at once, an exorbitant rate of interest seems to have been added to the principal, thus more than doubling what would ordinarily have been the selling price of the field.[36] Examples of deferred payment, in which this actually happened, occur in later Babylonian contracts.

[30] Daiches, op. cit., I, 2, p. 7.

[31] *gan,* the equivalent of 1800 *sar.*

[32] Poebel, in *B.E.,* Series A, v. VI, pt. 2, p. 5.

[33] ⅔ mina of silver.

[34] Daiches, loc. cit.

[35] Daiches, p. 62, no. 14.

[36] Ibid., p. 8. According to one of the earliest inscriptions the selling price of a field of 73 *gan* is 4 minas and 36 sheqels of silver. Cf. Johns, op. cit., 236.

Perhaps it will not be amiss to indicate briefly under this head that in conveyances of real estate the land upon which the house was built was the main consideration. Houses in Babylonia were treated as so much land and sold by the area, presumably on the recognition that the land was the only permanent thing in a country where the average building material[37] was of no great permanence. In the determination of real estate values the location and size of the 'built-on plot'[38] as well as the character of the house itself, would play an important rôle. Thus the price of 'one *sar*[39] of built house' might vary from 2–37½ sheqels of silver.[40]

But to return to Hanameel's patrimony in Anathoth. Inferentially the field was not very large. It is also quite conceivable that the impending doom of Jerusalem and its inhabitants would have a tendency to lower the price of land in Anathoth. Land values always reflect political conditions. Another possibility to be reckoned with is that Jeremiah's cousin may not have insisted on the full value of the property since it would be his privilege to repurchase the estate for the same price. Viewed in this light the seventeen sheqels practically amount to a loan, the *goël* having the usufruct of the property until the loan is paid. Otherwise the property

[37] Sun-dried bricks.

[38] *bitu epshu.*

[39] The area of the *sar* was 6 metres square.

[40] Daiches, 69, no. 17; 67, no. 16; 75, no. 20; 58, no. 12.

remains in the hands of the *goël,* who, as already stated, had consented to the purchase in order to prevent the alienation of family property.

Presumably no distinction is made in the pre-exilic period between the property rights of priests[41] and those of the laity. The restriction of the former to the *teruma layahwe* belongs to a later age.[42] According to the prophet of the exile, a portion of Yahwe's oblation is set aside for the maintenance of the priests and their families. This land is Yahwe's personal property which cannot be sold under any circumstances.[43]

In Lev. 25:25 the *goël* becomes the champion of an unfortunate and oppressed relative who had been obliged to sell a portion of his landed estate. The nearest kinsman[44] shall redeem the property, and restore it to the 'family' to which both belong. A more complex type of the *ge'ulla* appears in the book of Ruth where Boaz is introduced as the protector of a needy widow. Strictly speaking, he is not the *goël* but only an 'acquaintance' of the family.[45] In answer to Ruth's appeal[46] Boaz says: "Now, indeed, I would act as *goël* were there not a *goël* nearer than I am. . If he will do thee the kinsman's part, well, let him do the kinsman's part; but if he is not pleased to do thee the kinsman's part, then I will do thee the kinsman's part."[47] The obliga-

[41] 1 K. 2:26; Jer. 1:1; Neh. 13:10.
[42] Ezek. 45:1.
[43] Ezek. 48:14.
[44] *goël.*
[45] 2:1; cp. 3:2.
[46] 3:9.
[47] 3:12, 13.

tion is acknowledged by the relative, and he even declares himself willing to redeem the estate of Elimelech.[48] But upon being told that by buying the inheritance he must also marry Ruth he renounces his rights in favor of Boaz, and turning to the latter, he adds, "I am unable to redeem it for myself lest I mar mine own inheritance: redeem thou my right to thyself for I am unable to redeem it."[49] Possibly the *goël* was already married[50] and did not wish to mar his inheritance by a second marriage which might eventually lead to a division of the property among the children of both wives. Boaz, it seems, is free to act in the matter for he immediately buys the inheritance 'from the hand of Naomi' and marries Ruth owing to the advanced years of her mother-in-law.[51] Much of the evidence undoubtedly points in the direction of levirate marriage, not of the older type exactly, but of a modified form of it, as evidenced by the interplay of various motives, some of which are difficult to reconcile with each other.[52] That the *goël* should be obliged to buy the inheritance, marry the widow, and then take upon himself the additional duty of the levirate, is not altogether in harmony with the idea of inheritance and the levirate custom. "The heir does not buy his inheritance, nor would the *levir,* who is always the heir, buy it; he enters into the place of the deceased by virtue of his blood relationship, and not because he buys this right which is coupled with

[48] 4: 4b.
[49] 4: 6.
[50] So Targum. Bertholet, *K.H.K.A.T.,* 66.
[51] 1: 12; 4: 5, 10.
[52] Nowack, *H.K.A.T.,* 195.

obligations.''[53] The opening verse of the third chapter clearly shows that the wellbeing of Ruth is the object primarily aimed at, ''Then Naomi her mother-in-law said unto her, My daughter, shall I not seek a resting-place[54] for thee, that it may be well with thee?'' And strangely enough the purpose of the levirate is actually defeated in the end, Obed being regarded, not as the son of Mahlon, but of Boaz.[55] Briefly stated, the *goël* of the book of Ruth purchases a parcel of ground once owned by Elimelech, marries Ruth the Moabitess, and 'builds up his own house.'[56] The offspring of this marriage is heir to the inheritance of Elimelech as well as that of his real father, Boaz.

The *ge'ulla,* then, is an adaptation to agricultural conditions. After the settlement in Canaan agrarian interests predominate. Property in lands and houses must be protected and kept within the family. The transition from the 'avenger of blood,' charged with the duty of avenging the wrongs of a fellow clansman, to a vindicator of family rights would seem to be a natural one. In an agricultural community the *goël* has not only the right of preemption,[57] but also that of redemption.[58] The *goël,* as has already been seen, is morally bound to buy the property of his relative who is obliged to sell his patrimony. Property already sold must be 'redeemed,' or bought back, and so restored to the family.

[53] *A.J.S.L.,* XIX, 145.
[54] home.
[55] 4: 21.
[56] 4:11–12.
[57] Jer. 32.
[58] Lev. 25: 25; cp. Ruth 4: 4, 6.

The application of the old term *goël* to Yahwe marks another stage in the history of the word. Canaan, it will be remembered, had been seized by the Hebrews in the name of Yahwe their God and held by them on lease. Several centuries later they are forced to abandon their native country and settle in Babylonia. But while Yahwe has suffered the destruction of Jerusalem and its sanctuary, he will again restore the land to its former condition. Most of the passages, in which the term *goël* is applied to Yahwe, are to be found in the latter part of Isaiah.[59] "For naught ye were sold," says the prophet, "and not for money shall ye be redeemed."[60] The God of Israel has received no equivalent from the Babylonians for his possessions. No sale has been made in any real sense but only a temporary transfer. The restoration of the exiles will soon be at hand. "Thus saith Yahwe, thy *Goël,* I am Yahwe, the maker of everything, that stretcheth forth the heavens alone, that spread forth the earth, that saith of Jerusalem, Let her be inhabited, and of the cities of Judah, Let them be built, and her desolate places will I raise up."[61] And again the prophet exclaims: "Break out in song ye waste places of Jerusalem,—for Yahwe hath redeemed Jerusalem."[62] The land is to be restored to its rightful owners by the divine *goël.* God will reclaim his people from exile: "Go ye forth from Babylon,—declare ye, Yahwe hath redeemed his servant Jacob."[63] The returning exiles shall be called "a

[59] Chaps. 40–66.
[60] 52: 3.
[61] 44: 24, 26.
[62] 52: 9.
[63] 48: 20.

people of holiness, the 'redeemed ones' of Yahwe,"[64] whom the Lord "hath gathered from the east and from the west, from the north and from the sea."

Despite the fact that the legal decisions of Babylonia have not as yet yielded any definite statements regarding the *goël's* preferential right of buying hereditary property in order to prevent its alienation from the family, the right of preemption[65] may be inferred from the occurrence of the right of redemption. Thus, five acres of cultivated land, formerly held by the claimant's father, are redeemed or bought back for seven sheqels of silver.[66] It is but reasonable to suppose that the seven sheqels correspond to the amount paid by the previous purchaser. Considering the superior quality of the land the original purchase-price could scarcely have represented the full market value of the field. Moreover, there is nothing in the context to indicate that the full price had been paid, the characteristic phrase, *sham-til-la-bi-shu,* being entirely absent. According to another tablet, also from the First Dynasty, the price of redemption for one-half *sar* of built house and one-half *sar* of waste land in the immediate vicinity is five sheqels of silver.[67]

In a deed of sale, already quoted,[68] the vendors and their legal heirs are explicitly bound not to insti-

[64] 62: 12; cp. 35: 9; 51: 10.
[65] Johns, op. cit., 122, 184.
[66] Poebel, p. 11, no. 45.
[67] Meissner, *A.B.R.*, p. 7; cp. Meissner, *B.A.P.*, 42.
[68] See above, p. 72.

tute legal proceedings for the recovery of hereditary land. 'At no future time shall *Nannar-idinna* and *Sin-bani* make claim upon the field. . If their brothers or sisters should make claim, then *Nannar-idinna* and *Sin-bani* shall pay an indemnity.'[69] This verb reappears in the same form in Neo-Babylonian jurisprudence. Should the seller break his agreement and put in a claim to the property, "The plaintiff of that field shall restore[70] twelve-fold[71] the money which he received." The imposition of a heavy penalty on the seller and his heirs was a sufficient protection to the buyer against the reclamation of family property. The right of buying back such property must have existed on the seller's side, otherwise neither he nor his closest relations would have been called upon to obligate themselves not to interfere with the transaction.[72]

The functions of the Hebrew *goël,* previously described, are assumed to a very large extent by the *wali*[73] of Arabic literature. As the next of kin, the *wali* is bound to avenge the blood of a slain kinsman, 'And slay not the soul[74] that God has forbidden

[69] *itanapalu,* I3 from *apalu,* 1, to answer; 2, to satisfy, restore, indemnify, cf. Daiches, p. 41.

[70] *itanappal,* cf. Clay, *B.E.,* Series A, v. VIII, pt. I, 23–24.

[71] A like penalty is imposed in Assyrian times; cf. Johns, 244.

[72] For further illustrations cp. Daiches, nos. 1–20; Meissner, op. cit., nos. 30–50; Johns, *A.D.D.,* §600; Kohler and Peiser, *A.B.R.,* v. I, p. 15.

[73] plur. *awliya',* the nearest kinsman. The corresponding verb is *waliya,* to be near, to protect. That the *wali* was a close relative is proved by the equation of *wali* with *aqaribu.* Procksch, *Blutrache,* 25, n. 4.

[74] 'life.'

you, except for just cause. If any one is slain unjustly we (God) have given his *wali* authority but he shall not go too far in slaying where he receives aid.'[75] When acting in this capacity he is commonly referred to as the *waliyyu'd-dam,* or the avenger of blood. In exacting retaliation the brother and the son of the slain have the precedence. Failing these the duty of blood-revenge[76] devolves upon the father, the paternal uncle,[77] the nephew on the father's side, and then on the grandson and the first cousin.[78] The order in which the above individuals are named clearly indicates that the duty of retaliation was an immediate concern of the 'family'[79] and not of the community at large. It was only when the 'family' was in no position to carry out the obligation that the duty fell to the lot of the tribal group to which the 'family' belonged.[80]

How disastrous the law of blood-revenge must have been to the best interests of Arabian society may be surmised from the attempted remedial legislation of the great reformer. In a fragmentary law code, compiled during *Muḥammad's* stay in Medina, it is enacted that 'if a man kill a fellow Muslim and he be convicted, then the slain man shall be avenged, provided the *wali* of the slain insist upon it; at any rate the believers must make a united stand against him.'[81] Instead of the old

[75] Sura, 17: 35; cp. Sur. 6: 152.
[76] The technical term employed is *tha'r* (*thu'ra*).
[77] *'amm.*
[78] *ibnu l 'aḫi,* cf. Procksch, 25 f.
[79] *raht.*
[80] Procksch, 28–29.
[81] Ibid., 66 (342: 13).

blood-feud of 'the days of ignorance' the act of requital now has for its object the guilty culprit himself, the *wali* becoming the executioner in the event of his unwillingness to take blood-money from the slayer's kinsmen. That the members of the new community should treat the slayer as an outlaw and assist in his capture marks an advance on previous practices, which often resulted in social and political chaos. In the sequel, however, the provisions of the new law suffered numerous infractions, especially in the desert where the old tribal feeling and the sense of solidarity on the part of the kindred group were far more pronounced than among the urbanites of Arabia.

Thus it is easy to see how the *wali* comes to be regarded as the protector of a kinsman's interests. All bloodshed is avenged by the nearest relative of the slain, the *wali* either slaying the culprit or accepting the usual blood-money.[82] Where other interests are at stake, such as property and the like, the *wali* may act in the capacity of a protector or guardian[83] of his kinsman's property rights as he will ultimately share in the inheritance himself. In a passage, antedating the flight of *Muḥammad,* the *wali* inherits along with the sons of the decedent.[84] According to *Baydawi's* comments on Sura 17:35 the *wali* is really the heir.[85]

[82] "The blood-money between tribe and tribe", says *Shayḫ 'Ali,* "is now eight hundred dollars, which is contributed by all the tribesmen of the slayer, and is equally divided among all the males of the tribe." Cf. *Kinship,* 64, note 1.

[83] Cp. Sur. 4.

[84] Wellhausen, *Ehe,* 477.

[85] *alwali = alwarith.* Procksch, 25, n. 3.

Even *Allah* is spoken of as the *wali*[86] of his people.[87]

The relation of the *wali* to the right of preemption and redemption is a matter of obscurity because of a lack of elucidative evidence. But before leaving the subject it will be of interest to observe that according to the *Muḥammadan* law of India the right of *shuf'a* or preemption applies to immovable property[88] owned by one or more individuals.[89] Among the *Ḥanifites* the right of *shuf'a* may be claimed by three classes of persons: (1) by the co-sharer in the property, (2) by a sharer in the rights and appurtenances, and (3) by a neighbor. The preemptor has a right to press his claim as soon as the property has been transferred for a consideration.[90] It goes without saying that the price offered by the claimant must be the same as that paid by the purchaser. For any deterioration of the property caused by some act of the purchaser in consequence of the claimant's demand, the purchaser is liable. One of the devices resorted to for defeating the right of *shuf'a* was to sell the property for a price above its value and then to receive something of trifling value in exchange for it. This would have compelled the preemptor to pay the full price, that is, if he still persisted in buying the property.

[86] protector, guardian, governor.

[87] Sur. 13: 12b.

[88] Some of the Muslim doctors would also extend the right to slaves. Cf. Baillie, U.B.E., *A Digest of Muḥammadan Law,* 176.

[89] Syed Ameer Ali, op. cit., I, 589 f.

[90] A *Shi'ite,* on the other hand, may avail himself of this privilege immediately on the conclusion of the contract and not subsequently to the transfer of the property.

The right of *shuf'a* could be inherited by the heirs of the preemptor.[91] The latter might also relinquish his right in favor of the purchaser, either with or without any compensation.

From what has been said above it would appear that there was a strong disinclination among the Arabs to alienate landed property. Thus, if a Beduin, for any immediate purpose, such as making an atonement for bloodshed, 'must sell his inheritance of land, he sells it to some tribesmen, and not to the negro tenants.'[92]

[91] So among the *Shi'ites* and *Shafi'ites*.

[92] Doughty, op. cit., II, 116.

CHAPTER V

SLAVERY

The institution of slavery presents in connection with property and its rights many interesting aspects, of which perhaps agnation is the most significant.

Strict adherence to the principle of agnation occasionally resulted in the selection of an adopted male slave as successor to his master, provided the latter died without male issue. Abram's steward, or chief slave, for instance, will be the heir unless a son is born to the patriarch.[1] An example of like import is found in 1 Chron. 2:34. "Now Sheshan had no sons, but he had daughters. And Sheshan had a slave, an Egyptian, whose name was Jarha. And Sheshan gave his daughter to Jarha, his slave, to wife." Perhaps it will be permissible to read a sociological meaning into this passage, regardless of the claims of exegesis. Positions of responsibility requiring more than average ability were open to slaves who had gained the confidence of their masters. Thus Ziba, the servant of Meribaal, is rewarded with the management of his young master's estate for his loyalty to David at a critical point in the king's career.[2] According to Lev. 25:49 a bondslave might acquire sufficient means wherewith to purchase his freedom.

Slaves were generally regarded as members of the household into which they had been adopted.[3] As a

[1] Gen. 15:1–4; 24:2.
[2] 2 Sam. 9; 16:1 f.
[3] Stade, op. cit., I, 379; Benzinger, op. cit., 125.

member of Abram's family Eliezer has a capacity for inheritance. The rite of adoption, which may be safely assumed in the case of Eliezer, also carried with it acceptance of the family worship. The manager of the patriarch's estate prays to the God of Abraham.[4] Non-Israelites must enter into a covenant relation with Yahwe by submitting to the rite of circumcision before they can be adopted into Israelitish families.[5]

Slavery on a large scale presupposes a certain amount of material progress. Nomads are not in a position to create a surplus of economic goods owing to a scarcity of food and industrial pursuits. The institution of slavery could not have been a factor in Hebrew life until after the invasion of Canaan. That the conquest was a gradual one is now a commonplace in Hebrew history.[6] For many years the invaders were unable to capture the strongholds of the urban population of the land.[7] The inhabitants of the country district in the highlands and of the unprotected villages were either exterminated or enslaved. Where only a slight advantage had been gained over their opponents, the latter were made tributary to the Hebrews.[8] Such communities were subsequently reduced to a servile condition, for "when Israel was become strong they put the Canaanites to task-work."[9] At this early period a

[4] Gen. 24: 12, 27, 42, 48.

[5] Ex. 4: 24 f., Josh. 5: 2 f.; 1 Sam. 17: 26, 36; Ezek. 44: 7, 9; Isa. 52: 1; Lev. 26: 41; Gen. 17: 10–14, 23–27; 34: 14 f., Ex. 12: 44, 48; cp. Gen. 17: 13–14.

[6] Ex. 23: 30; Deut. 7: 22.

[7] Judges.

[8] Judg. 1: 35.

[9] Judg. 1: 28.

compromise is effected wherever necessary under the circumstances. The struggle between the Israelites and Canaanites thus proves to be a struggle for control rather than a struggle for extermination.[10] In the sequel many of the inhabitants of the land are enslaved by the conquering invaders, since there was an imperative need for servile labor, for which the Canaanites were better adapted than the incoming tribes from the Arabian desert. The necessity of utilizing the native population for the purposes of agriculture eventually led to the setting up of a fictitious kinship through adoption and covenant.[11] By a long process of absorption and assimilation a considerable number of Canaanites and other aliens were grafted into the social fabric of the new community. Alien women naturally became the property of their masters. Where these aliens were men, they were treated either as slaves or as clients.[12] All these aliens might enjoy the protection of Israelite society upon their acceptance of the religion of Yahwe, which, as already intimated, was the usual accompaniment to adoption. Outsiders willing to meet all the religious and social requirements of the protecting community could attain to full citizenship, and so avail themselves of all the rights and privileges of a native-born.[13] Foreigners[14] living within the confines of the holy land, who failed to meet the above conditions labored under serious disadvantages.

[10] Wallis, *Journal of Sociology*, v. 14, 502 f.
[11] Ex. 23: 32; 34: 12, 15; Deut. 7: 2; Judg. 2: 2.
[12] *gerim.*
[13] *ezraḥ*, Ar. *ṣariḥ.*
[14] *nokri.*

Servitude, however, was by no means restricted to aliens conquered in battle. Through stress of poverty, occasioned by drought, famine, and other misfortunes, sons and daughters of Hebrew parentage were frequently sold into slavery as an escape from hunger and the alienation of the family domain.

From the standpoint of the invaders the acquisition of the land of Canaan was made possible by the divine right of conquest.[15] Country estates were held by the heads of Israelitish families, such as Gideon and Elkanah, Saul and David, and all the rustic folk who make their appearance in some of the oldest historical narratives of the Old Testament.[16] At a later period the centralizing tendency of a despotically inclined monarchy had its counterpart in a gradual concentration of landed property in the hands of a privileged class of officials and courtiers. The rise of a luxurious court in the reign of Solomon and his immediate successors, together with the growth of a commercial spirit, especially among the wealthy classes who centred in the cities, proved disastrous to the lower stratum of the population.

Under the pressure of hard times temporary relief was sought by the peasants in mortgages on their farm lands and houses. But loans once made are extremely difficult to repay. Foreclosures seem to have been the order of the day, as may be inferred from the extant evidence relating to the enslavement of insolvent debtors.

[15] Judg. 11: 23–24.
[16] Judges, Samuel, and Kings.

The acuteness of the social problem no doubt led to the compilation of a considerable portion of the earliest Hebrew code known to us.[17] There can be no question as to the antiquity of its contents in spite of the fact that the book was not published until some time after the reign of Solomon. One of the principal concerns of the legislator is with the rights of Hebrew slaves who had probably been sold or who had sold themselves into slavery in payment of a debt.[18] The period of service is to be limited to six years, and in the seventh year the slave is to be released from all further obligations toward his creditor. If, upon entering his master's service, he was the possessor of a wife,[19] his wife and children shall accompany him when he receives his freedom; but if his lord married him to one of his female slaves the wife and children must remain in servitude as they are the master's property. Family attachments, of course, would in many cases furnish a powerful motive for a voluntary life service on the part of the slave, especially if his lot had been made all the more endurable by good treatment at the hands of his master. The code provides in such a case that the slave shall be brought by his owner unto the *elohim*[20] of the house in whose presence the "master shall bore his ear through with an awl" as a sign of perpetual slavery.[21]

[17] Ex. 20^{22}-23^{33}.

[18] Ex. 21: 2 f.

[19] *ba'al ishsha.*

[20] Household gods, or *Penates,* kept and worshipped near the door of the house. Baentsch, *Ex.,* 190.

[21] Ex. 21: 6.

A female slave, on the other hand, is not to be liberated at the end of a stated interval of time.[22] The book of the Covenant explicitly states that a daughter who is sold by her father as a bondwoman is usually married by the one making the purchase or by the latter's son.[23] In no case shall the owner be permitted to sell her to a non-Israelite. If the woman no longer found favor in her master's eyes, she must be either redeemed or retained by him, even if he decide to take another concubine, without thereby curtailing any of her former marriage rights, including food and clothing. Where these rights are withheld, no ransom is required for her liberation from servitude; she goes out a free woman.[24]

The Deuteronomic legislation marks an advance on the law of Exodus in that the period of servitude is to be identically the same for both sexes. "If thy brother, an Hebrew man or an Hebrew woman, be sold unto thee, he shall serve thee six years; and in the seventh year thou shalt send him away free from thee."[25] A similar extension is made to a female slave who prefers a lenient master to the uncertainties and possible hardships of freedom.[26] The appropriate ceremony performed by the master prior to the reception of the slave into his household corresponds in every particular to that of Ex. 21: 6.[27]

[22] Ex. 21: 7–11.
[23] Ex. 21: 8–9.
[24] Ex. 21: 11.
[25] Deut. 15: 12.
[26] Deut. 15: 16–18.
[27] For obvious reasons no allusion is made in this connection to the household gods of more ancient times, the word *delet* (door) being the only survival.

Slaves desirous of regaining their liberty after six years of service are to be generously dealt with; they are to receive a share of the agricultural produce, consisting of cattle, grain, and wine, as a safeguard against oppression and hopeless poverty.[28]

Laws like these appear to have been generally disregarded by the city capitalists at large. No mention is made of the release of Hebrew slaves until the days of Jeremiah.[29] Jerusalem, as we learn from the prophet, is again besieged by the Chaldeans.[30] The necessaries of life, though ample at first, are gradually becoming less and less from day to day. Every available man is pressed into the service. A year of release[31] is proclaimed throughout the city, possibly under the influence of a temporary panic, with a view to stimulate the slaves to greater activity and zeal in their efforts to thwart the purposes of Nebuchadrezzar. The Chaldeans, it appears, withdraw for a time with the intention of joining battle with Pharaoh's army approaching from the south. And now the wealthy urbanites repent the loss of their bondmen to whose release they had already consented, and instead of being given their liberty, the slaves are sent back into bondage. Jeremiah, in taking up the cause of the servile population, inveighs against Zedekiah and the nobility of the city for having thus violated a covenant made in the presence of Yahwe, their God. They and their fathers had been guilty of disobeying the merciful provisions of both Ex. 21:2 and Deut.

[28] Deut. 15:13–15, 18.
[29] Jer. 34:8–17.
[30] Jer. 34:21; 37:1–10.
[31] *deror.*

15:1, 12; for "your fathers hearkened not unto me, neither inclined their ear."[32] In consequence of their disobedience the prophet brings this message: 'Therefore thus saith the Lord: Ye have not hearkened unto me, in proclaiming a release, every one to his brother and every man to his neighbor: behold, I proclaim a release for you, saith the Lord, to the sword, to the pestilence, and to the famine; and I will make you to be removed into all the kingdoms of the earth.'[33] The passage in Jeremiah shows how difficult it was to enforce the laws of Exodus and Deuteronomy concerning the manumission of slaves after six years of servile labor.

The law of Leviticus[34] prolongs the period of servitude to the jubilee,[35] but insists on humane treatment for those in bondage. 'And if thy brother that dwelleth by thee grow poor, and sell himself to thee, thou shalt not compel him to serve as a bond-servant: But as an hired servant and as a sojourner he shall be with thee . . Thou shalt not rule over him with rigor.'[36] Retainers and their families shall return to their hereditary possessions in the year of jubilee.[37]

Wealthy residents of foreign extraction[38] are likewise exhorted to leniency toward impoverished Israelites who had sold themselves for a debt.[39] As

[32] Jer. 34: 14.
[33] Jer. 34: 17.
[34] 25: 39–55 (*H*, and *P*).
[35] Fiftieth year, or $7 \times 7 + 1$ years.
[36] 25: 39, 40[a], 43.
[37] 35: 40[b]–41.
[38] *ger* and *toshab*.
[39] 25: 47, 53, 55.

in the former instance, the year of jubilee is to be the maximum limit of service, with this proviso, however, that any Hebrew who is compelled to sell himself into the service of a stranger[40] may be redeemed at any time by one of his kinsmen, that is, if he be unable to redeem himself.[41] The price of redemption, of course, was always a variable quantity, depending in the main on the length of time already served by the insolvent debtor. To approximate the sum required for redemption it was necessary to divide the original purchase-price by the number of years intervening between the first year of servitude and the year of jubilee, and to multiply the quotient by the number of years to run between the redemption and the jubilee, according to a fixed scale of wages[42] ordinarily paid to hirelings.[43] The difference between this amount and the original purchase-price represents the man's wages whilst in servitude. In other words, it is not the relation of a master to his slave that the priestly legislator has in view but that of a capitalist to his hired servant. The debtor virtually hires himself out to the creditor for a period of time varying from 1–49 years with the privilege of dissolving this relationship as soon as he succeeds, either personally or through his kinsman,[44] in refunding the value of his services for the years that still remain.[45]

[40] *ger.*

[41] 25: 48–49, 54.

[42] The annual wage paid to a field laborer in ancient Babylonia is eight *gur* of grain, and that of a herdsman six *gur*. Cf. *C.H.*, 257, 258.

[43] Lev. 25: 50–52; cp. 25: 16, 27; 27: 18.

[44] *goël.*

[45] Buhl, *S.V.I.*, 111; Baentsch, *Lev.*, 429.

According to the law in its present form only foreigners are to be lifelong slaves. 'And thy male and female slaves which thou shalt have, shall be of the heathen that are round about you . . They shall be your slaves forever; but over your brethren, the children of Israel, ye shall not rule one over another with rigor.'[46]

The Babylonian slave was regarded as an object of so much monetary value which might be disposed of by the owner[47] like any other piece of property, whether real or personal. In a conveyance of the First Dynasty a female slave and a plot of ground are purchased for eighty-five sheqels of silver.[48] According to a contemporary source, *Abi-maraṣ*, a sun-devotee, buys a woman slave and an ox for twenty sheqels.[49]

Apart from the meagre data relating to the money value of slaves in the Old Testament, the subject is of sufficient importance to warrant a short digression. The average price of a Babylonian slave in very early times is twenty sheqels of silver.[50] In the contracts of the First Dynasty female slaves average but half of this amount.[51] For Assyrian times the usual price is thirty sheqels, with a minimum of twenty and a maximum of one hundred and thirty sheqels. The price of a female slave varies from two and a half to ninety sheqels. Twenty

[46] 25: 44, 46b.
[47] *be-el ardi.*
[48] Daiches, 89, no. 25.
[49] Ibid., 86, no. 24.
[50] *C.H.*, 252.
[51] Daiches, 81, 83; Poebel, 38–39.

sheqels is again the average price in the Neo-Babylonian period, with examples as low as seventeen and as high as eighty sheqels.[52]

Though essentially a chattel and having no genealogy of his own,[53] a slave could be admitted to the privileges of sonship by virtue of the rite of adoption: "(a slave named) *Mar-Ishtar,* the son of *Iltani* and *Nidnat-Sin, Iltani* and *Nidnat-Sin* have adopted. *Aḫu-waqar* is his brother. If *Mar-Ishtar* say to *Iltani,* his mother: 'You are not my mother,' or to *Nidnat-Sin,* his father: 'You are not my father,' then he shall be sold for money. If, however, *Iltani* and *Nidnat-Sin* say to *Mar-Ishtar,* their son: 'You are not our son,' then he shall take a portion equal to that of the other children of *Iltani* and *Nidnat-Sin,* and he shall go free."[54]

Mar-Ishtar, it will be observed, is called the son of *Iltani* and *Nidnat-Sin* because he has been adopted into the family. That he was a slave is clear from the circumstance that the names of his real parents are not given. There is not the slightest hint in the document as to the underlying motive for *Mar-Ishtar's* adoption. The desire for an heir who would carry on and perpetuate the family cult seems to be entirely absent. However, aside from the claims of eschatological beliefs,[55] the one adopted was often looked upon by the adopting parents as a source of profit. '*Surratum* together with (her)

[52] Kretschmann, E. T., *The Slave Trade in the Time of Nabuna'id,* 65, 75 (an unpublished thesis in the Library of the Univ. of Penna.).

[53] His father's name is passed over in silence. He is entered in the slave sales as 1 *sag wardu* = *ardu,* Ranke, op. cit., p. 19; Daiches, 79 f.; cp. Gr. (*σῶμα ἀνδρεῖον* (*γυναικεῖον*).

[54] Meissner, *A.B.K.* (*Der Alte Orient*), p. 27. (*B.A.P.,* p. 77.)

[55] See above, pp. 48 f.

suckling daughter, . . the *Shamash* priestess *Erishti-aya,* her mother, has 'purified' and adopted . . . *Erishti-aya* has 'cleansed'[56] her and has turned her face[57] toward the rising sun. As long as her mother *Erishti-aya* lives, she shall support her. When *Erishti-aya* dies, she shall be free.[58] She shall be independent.'[59]

On the death of *Erishti-aya* the slave and her child shall be liberated as a reward for her services, and receive whatever property the adopting parent may leave.[60]

But in the event of his disobedience the adopted son shall be deprived of his rights and receive 'the punishment of a free citizen.'[61] This implies that the individual in question was originally the son of parents to whom the rights of citizenship had been denied.

A number of these documents evidently have to do with the adoption of slaves of foreign birth. Full rights of citizenship could only be obtained by submitting to a religious ceremony similar to that above indicated. To become a member of a Babylonian family a foreigner must be 'purified,' 'cleansed,' since he was looked upon as unclean. Religious cleanliness[62] is apparently the *sine qua non* of Babylonian worship. And without participation in the

[56] *ul-li-il-shi;* cp. Schorr, *Altbab. Rechtsurkunden,* in *Sitzungsberichte d. kais. Akademie d. Wiss.,* v. 165, H. III, 15.

[57] Cp. Ranke, 29, l. 16.

[58] *ellit,* so Meissner, *A.A.R.,* 24.

[59] Ranke, 28; cp. 29, l. 10.

[60] Ibid., 29, l. 6.

[61] Ibid., l. 12; cp. Cook, *L.M.C.H.,* 132, n. 2.

[62] *a-na Shamash u-li-il-shi-na-ti,* Poebel, 39.

cult the adopted slave can never hope to succeed to the estate of his master.

The endeavor to associate the above purification rite with the rite of circumcision has met with little success for want of corroborative material. The view that the aforementioned ceremony refers to the 'cleansing' of the *pudenda*[63] is confuted by the Sumerian *sag-ki,* which is equivalent to the Assyrian *putu*[64] or forehead. By cleansing the forehead the usual marks of servitude are symbolically removed from the forehead of slaves[65] precedent to adoption.[66]

How far the institution of slavery dates back in Babylonian history can no longer be ascertained. It is safe to say, however, that the order in which the ranks of the servile class were recruited corresponds in the main to the rise and development of slavery among the Hebrews. The largest accessions doubtless came through the fortunes of war. Most of the captives taken in military expeditions soon found a place in the great building operations of the Babylonian kings.[67] But the need of slaves for agricultural and domestic purposes was no less imperative. A goodly number of such slaves was secured through the agency of an extensive foreign slave-trade.[68] Favorable conditions tending toward

[63] *pudasha elletum, Gilgamesh,* XII, Col. 1, 29 f.

[64] also *panu,* 'face.'

[65] So Ungnad; cp. Ranke, p. 30.

[66] A manumission document written in the Sumerian script testifies to the cleansing of the forehead in the case of a female slave about to be liberated. Poebel, 38–39.

[67] King, op. cit., v. III, p. LIII.

[68] *C.H.,* 280–281; cp. Johns, 178.

a natural increase of the servile population would continue the supply necessary for the development of a country like Babylonia.[69] But the most important source of slavery for our purpose is to be sought in unsuccessful commercial transactions culminating in the enslavement of freeborn citizens.

Babylonian legislation, no less than the Hebrew, is conspicuously humanitarian in its treatment of the insolvent debtor. Members of the debtor's household who had been bound over to service in payment of a debt were to regain their freedom[70] at the end of three years[71] and not after a period of six years, as in the book of the Covenant. As an inferior social being the male or female slave handed over for debt could be sold by the creditor, the debtor having no cause for complaint.[72] On the other hand, a female slave who has borne children for her master must be redeemed by the owner.[73] At the father's death the maid slave and her children shall obtain their freedom, and "the children of the wife may not lay claim to the children of the maid-servant for service."[74] The method of procedure is somewhat different in the case of a rebellious maid-servant assigned to the husband of a married votary. For an act of insubordination against her mistress she may be reduced to the level of a slave-girl, but she cannot be sold if she have become the mother of one

[69] Johns, *A.D.D.*, v. III, p. 383.
[70] *duraru*, cp. Heb. *deror*.
[71] *C.H.*, 117.
[72] Ibid., 118.
[73] Ibid., 119.
[74] Harper, *C.H.*, 171.

or more children.[75] There is nothing to prevent a mistress from selling a childless concubine under like circumstances.[76]

Custom, no doubt, required that the unmarried debtor should work off his own debt.[77] Since voluntary servitude, entered into by a married man and having for its aim the satisfaction of a financial or other obligation, would leave the wife and children unprovided for, it was the part of wisdom that the latter should help to pay the debt by a three years' service in order to obtain the necessaries of life and a home in the interval. Servitude of the above type was far more preferable than abject poverty and destitution.

Even slavery had its advantages. The average slave enjoyed a remarkable degree of freedom. He might engage in business by agreeing to pay a fair percentage of his profits to the owner.[78] Of course, he could not contract or enter into business relations with another slave or with a freeman except by power of attorney empowering him to act in his own behalf.[79] With wealth thus acquired he could buy his freedom.[80] Further, the slave had his *peculium,* that is to say, he could own private property. His ownership in such property, however, was not absolute, as is seen from the yearly *mandattu,* a sort of yearly due or tribute, which a slave was required to pay to his master.[81]

[75] Ibid., 146.
[76] Ibid., 147.
[77] Cp. *C.H.*, 115, 256.
[78] Cp. Kohler and Peiser, op. cit., I ff., II, 6.
[79] Ibid.; cp. *C.H.*, 7.
[80] Johns, *B.A.L.C.L.*, 172.
[81] Johns, *A.D.D.*, III, 376 ff.

Married slaves generally lived in a house of their own. Children born in slavery naturally belonged to the owner of the parents.[82] But if the mother is a free woman the master is not to regard the children as his own. "If either a slave of the palace or a slave of a freeman take the daughter of a man,[83] and she bear children, the owner of the slave may not lay claim to the children of the daughter of the man for service."[84] At the slave's death the woman takes her dowry and the goods that have been amassed by both since the day of their marriage shall be equally divided between the children of the freeborn mother and the owner of the slave. "If a slave of the palace or a slave of a freeman take the daughter of a man (gentleman); and if, when he takes her, she enter into the house of the slave . . . with the dowry of her father's house; if from the time that they join hands, they build a house and acquire property; and if later on the slave . . . die, the daughter of the man shall receive her dowry, and they shall divide into two parts whatever her husband and she had acquired from the time that they joined hands; the owner of the slave shall receive one-half and the daughter of the man shall receive one-half for her children."[85] This regulation applies also to a dowerless woman of superior rank.[86]

[82] Clay, *Light on the Old Testament from Babel*, 213.

[83] Society in *Ḫammurabi's* day consisted of three classes: 1) the *awilum*, the property owner of the upper class (gentleman, patrician), 2) the *mushkenum*, or poor freeman (plebeian, retainer), and 3) the *wardum-amtum*, the male and female slaves. Cf. Harper, *C.Ḫ.*, p. XII.

[84] *C.Ḫ.*, 175.

[85] Ibid., 176.

[86] 176 A.

The *mushkenum* of the Code is sometimes translated, 'retainer,' 'serf.' Members of this class occupy an intermediary position between the *awilum* and the *wardum*.[87] The vicissitudes of fortune were such that men of the upper class[88] were not infrequently obliged to join the ranks of these dependents.[89] They appear as cultivators of land held on the metayer system.[90] In return for a consideration or rent, payable at harvest time, the landlord furnishes his tenant with seed, agricultural implements, oxen, and other necessary supplies.[91] According to a contemporaneous document *Amat-Shamash,* a votary, let out,

"Six oxen, among them two cows; an irrigator, *Amel-Adadi;* two tenders of an ox-watering machine, his nephews; three watering-machines for oxen; a female servant who tended the machines; half a *gan* of land for corn-growing; to *Gimillu* and *Ilushu-bani.* They shall make the yield of the field according to the average(?). They shall cause the corn to grow and measure it out to *Amat-Shamash,* daughter of *Marduk-mushallim.* In the time of harvest they shall measure out the corn to *Amat-Shamash.*"[92]

A dishonest cultivator shall have his fingers cut off for breaking his contract.[93] For bad usage of his equipment, damages may be collected by the land-

[87] Johns, *A.J.S.L.,* 1903, 97 ff.
[88] *awilum.*
[89] *C.H.,* 256.
[90] Ibid., 253.
[91] Ibid.
[92] Johns, *B.A.L.C.L.,* 196.
[93] *C.H.,* 253.

lord.[94] If through any fault of the tenant "there be no crop in the field, they shall call that man to account and he shall measure out sixty *gur* of grain per ten *gan.*"[95] The tenant may be degraded to the level of serf if he be unable to meet his obligation, and "they shall leave him in that field with the cattle."[96]

Land in Assyrian times is seemingly in the hands of wealthy real estate holders; hence the large number of serfs, or *glebae adscripti.* They could be sold by the owner along with the land they had cultivated. But on the whole their lot was a tolerable one. "This class evidently possessed privileges highly esteemed, for their ranks were recruited from all classes of artisans in the towns, cooks, brewers, gardeners, washermen, and even scribes."[97]

That the nearest relations had the power to redeem an unfortunate kinsman from servitude may be inferred from several Assyrian contracts.[98]

Persian law legislates against the enslavement of a Susian, i. e., a man of the conquering race. He is not to be bought or sold like a slave.[99]

Slaves of Babylonian origin bought from a foreign slave dealer shall be liberated from servitude when brought back to their native land since it is illegal to sell a native slave to a foreigner. "If a man purchase a male or female slave of a man in a foreign country, and if, when he comes back to his

[94] *C.H.*, 254, 255a.
[95] Ibid., 255; cp. 42 f.
[96] Ibid., 256.
[97] Johns, op. cit., 172.
[98] Johns, *A.D.D.* III, §638.
[99] Johns, *B.A.L.C.L.*, 176.

own land, the (former) owner of the male or female slave recognize his male or female slave—if the male or female slave be a native of the land, he shall grant them their freedom without money.''[100] But slaves of foreign extraction may be sold to a foreigner, and then repurchased by a Babylonian, provided they had not escaped from their owners. If on their return to Babylonia these were recognized by their former owner, ''the purchaser shall declare before god the money which he paid (for them), and the owner of the male or female slave shall give to the merchant the money which he paid out, and he (the owner) shall receive into his care his male or female slave.''[101]

Among the Arabs slaves are commonly treated as merchandise. In *Muḥammadan* jurisprudence animals and slaves belong in the same category.[102]

While thus stigmatized as social inferiors, members of the servile class who had been adopted into Arabian families or clans were not under a legal incapacity to inherit the property of their adoptive parents. The rite of adoption[103] produced all the legal effects of natural paternity, and vested in the one adopted precisely the same rights and privileges as a legitimate son. There is evidence to show that captives of war[104] were adopted without hesitation in pagan Arabia for the purpose of adding to the

[100] Harper, *C.H.*, 280.
[101] Ibid., 281.
[102] Cp. Hughes, *Dictionary of Islam*, under ''Slavery.''
[103] *tabanna.*
[104] i. e., slaves.

numerical strength of the conquering tribe.[105] Men of valor would naturally prove most desirable additions. Thus *'Antara,* the son of an Abyssinian slave-girl, is incorporated by adoption into a group of alien blood upon giving proof of especial prowess.[106] The adoption of *Zaid*[107] by *Muḥammad* is thoroughly in keeping with pre-Islamic custom. It was only when the prophet wished to marry *Zainab,* the wife of his adopted slave,[108] that a distinction was drawn between an adopted son and a son proper. 'God has not made for any man two hearts. In like manner he has neither converted your wives whom ye have divorced into your real mothers, nor your adopted sons[109] into real sons. That is what ye speak with your mouths, but God speaks the truth and he guides to the (right) path. Call them by their (real) fathers' names; that is more just in God's sight; but if ye know not their fathers, then they are your brethren in the faith and your clients.'[110] That no such distinction existed before Islam is seen from the fact that "emancipated slaves appear in the genealogical lists without any note of explanation, just as if they had been pure Arabs. *Dhakwan,* for example, who is entered as son of *Umayya,* and whom the *Umayyads* themselves always called the son of *Umayya,* in

[105] Goldziher, op. cit., III, 138.

[106] *Kinship,* 52; cp. Jakob, *Studien in arabischen Dichtern,* III, 138.

[107] a captive of war.

[108] *Zaid.*

[109] *da'i:* "One who makes a claim in respect of relationship; i. e., one who claims as his father a person who is not his father . . . or one who is claimed as a son by a person who is not his father; an adopted son;" cf. Lane's *Lexicon.*

[110] Sura 33: 4–5.

spite of *Muḥammad's* new law, was really, as the genealogist *Daghfal* once reminded the *Ḫalif*[111] *Mu'awiya,* the slave who used to lead *Umayya* by the hand in his blind old age.''[112]

The rite of circumcision, which may be designated as the precursor and twin-sister of adoption, was likewise current among the pagan Arabs.[113] Accordingly, no special legislative act is required for its continuance in Islam, circumcision being incumbent on all good Muslims as a part of the *Sunna.*[114] For a full discussion of the ceremonies attendant upon the circumcision of a *muṭṭahir,*[115] or Muslim boy of to-day,[116] the reader is referred to Lane, *The Modern Egyptians,* vol. II, 244 ff.

The institution of slavery in Arabia is intimately associated with warfare. A passage in the *Qur'an* contains the following: 'O prophet, verily we make lawful for thee wives to whom thou hast given their gift (dowry), and what thy right hand possesses[117]

[111] 'Caliph.'

[112] *Kinship,* 52.

[113] A Jewish treatise (*Mekilta*) of the second century states that all Arabs were circumcised. The Abyssinians of pre-Islamic times became acquainted with the rite through the influence of southern Arabia. Circumcision was also known to the Edomites, Moabites, Ammonites, and Phoenicians. Cf. Benzinger, op. cit., 119 ff.

[114] custom, e. g., a practice which is observed by reason of the prophet's own example. Cf. Muir, *The Life of Maḥomet,* 185, n. 1; cp. Doughty, op. cit., I, 318.

[115] act. part. of the fifth form of *ṭahara:* one who purifies or cleanses himself; cp. *muṭahhar,* one who is freed from impurity (II. pass. part.).

[116] For a description of the 'nomad children's circumcision feasts' (*muzayyin*) compare Doughty, op. cit. I, 340–342.

[117] *ma malakat aymanukum,* a term generally used for slaves. This expression also occurs when male slaves are referred to; cf. Sura 4: 40; 16: 73; 24: 33, 57; 30: 27, etc.

out of the booty God hath granted thee."[118] And again: 'When ye meet the unbelievers, then strike off their heads until ye have massacred them, and lay (the remainder) in fetters. And subsequently permit the latter either to go free or to be ransomed until the war shall have laid down its burdens."[119]

The mention of negro slaves in old Arabian poetry[120] at once suggests a second method by which the ranks of the servile population were further recruited. Probably these Africans had been transported to Arabia by men engaged in the slave-trade.[121] Of the captives taken by the ancient Arabs in their numerous plundering excursions and inter-tribal wars, many found their way to the slave-markets of Mecca and Medina, *Taima* and *Ḥaibar*, where they could be sold into foreign slavery.[122] In the early stages of Islam, however, it was considered unlawful to treat Muslim women as captives.[123] But with the accession of *Mu'awiya* the older custom again prevailed.[124]

The practice of cohabiting with female captives, both married and single, constitutes a third factor in the history of slavery among the Arabs. "Unlawful for you are married women,[125] save such as your

[118] Sura 33: 49; cp. Numbers 31: 9.

[119] Sura 47: 4–5.

[120] *Mu'allaqat.*

[121] Jakob, op. cit., III, 137; cp. Doughty, op. cit., I, 247, 553; II, 165–168.

[122] *Kinship,* 89, 295.

[123] Goldziher, op. cit., I, 125, n. 1.

[124] *Kinship,* 89, n. 2.

[125] *muḥsana,* 'honorable women,' i. e., free Arab women of marriageable age legally married to Arabs of equal rank.

right hands possess.'"[126] According to the commentators[127] women captives may be cohabited with, 'even though their husbands be still alive.'"[128] The children of female captives of foreign birth would ordinarily join the ranks of the slave population, unless they had been raised to the status of sonship by a formal acknowledgment on the part of their respective parents.

Enslavement for debt is practically unknown in the life of a nomadic people. There is no evidence of its existence among the urbanites of ancient Arabia. But with the growth of a commercial atmosphere, as in the days of Islam, the debtor may be compelled to work off his debt.[129]

The legislation of *Muḥammad* is remarkably lenient toward the insolvent debtor. "If there be any (debtor), under a difficulty (of paying his debt), let (his creditor) wait till it be easy[130] (for him to do it); but if ye remit it as alms, it will be better for you.'"[131] In order to safeguard the rights of both parties to a contract, the amount of the loan

[126] Sur. 4: 28.

[127] *Al-Jalalan.*

[128] Female slaves captured simultaneously with their husbands are prohibited to the followers of *Abu Ḥanifa;* cf. Roberts, op. cit., 13, n. 3.

[129] Lane, op. cit., I, 132; 246 f. In his book of travels (I, 345) Doughty remarks that "if any villager has entrusted beasts to a nomad to graze with his own cattle, and they are reaved by the tribe's enemies, the villager will demand his own, and scurvily attach the *Beduwy,* as his debtor, if he may take him again in his village: but the *Beduwy,* whose law does not bind him to such restrictions, will beware, and no more adventure thither." Cp. II, 387–388.

[130] Ibid., I, 469.

[131] Sura 2: 280.

must be carefully committed to writing in the presence of two fellow-Muslims, or a man and two women. 'If ye mutually engage in a debt for a stated time, then write it down, and let a scribe write it down between you faithfully; . . and call two (male) witnesses; and if there be not two men, then a man and two women, from those whom he (the debtor) chooses for witnesses, so that if one of the two should err, the second of the two may remind the other; . . . and do not tire of writing it,[132] be it small or great, with its time of payment.'[133] According to the *Hedaya* the insolvent debtor may be imprisoned; but if he establish his insolvency, the judge shall declare him free.[134]

When a slave-girl becomes a mother by her owner, she is entitled to special consideration. *Muḥammad* is quoted by the traditionalists as saying that 'a slave-girl who has a child by her master is to be free at his death.' Upon giving birth to a son, the master will frequently emancipate his concubine at once, and make her his wife, in accordance with a precedent established by the prophet after he had been presented with a son by his Coptic slave woman.[135] Henceforth she could neither be sold in the market nor ransomed by her people, and her offspring would be both free and legitimate.

Kindness to slaves is an act of piety which is highly commended. 'Serve God, and do not associate aught with him; and show kindness to your

[132] e. g., a detailed account of the debt.
[133] Sura 2: 282–284.
[134] Charles Hamilton, *The Hedaya*,[2] 532.
[135] Mary.

parents, and to kindred . . . and to those whom your right hands possess, for God loves not him who is arrogant and proud."[136] Wealthy Muslims shall not refuse to share the good things of life with the slave members of the household. 'God has preferred some of you above others in providing for you; but those who have been preferred will not give of their provisions to those whom their right hands possess that they may share equally therein. Will they thus deny the favors of God?"[137] In a memorable speech delivered in the valley of Mina in the presence of a vast crowd of pilgrims the prophet continues: "And your slaves! See that ye feed them with such food as ye eat yourselves; and clothe them with the stuff ye wear. And if they commit a fault which ye are not inclined to forgive, then sell them, for they are the servants of the Lord, and are not to be tormented."[138] A man who is cruel to his slave 'will not enter paradise.'

The condition of slaves in modern Arabia is nearly always tolerable and often happy: "bred up as poor brothers of the sons of the household, they are a manner of God's wards of the pious *Muḥammadan* householder, who is *'ammy*,[139] . . . and *abuy*, 'my father.' Slave-holding among them is harsher in the mixed Holy Cities (where is the churlish military obedience and Turkish violence, and where some poorer citizens make merchandise of their slaves' labor)."[140]

[136] Sura 4: 40.
[137] Sura 16: 73.
[138] Muir, op. cit., 458.
[139] 'my uncle.'
[140] Doughty, I, 554.

Handicrafts being below the dignity of the Arab, it devolves upon the *ḥarim* and the slaves to look after the economic needs of a nomadic community.[141] That even the Medinese townsmen of *'Umar's* day had not attained to any thing like skill in such employments is evidenced by the fact that a Persian slave could be called upon to act in the capacity of a carpenter, painter, and smith[142] simultaneously.

The slave, if a person of good habits and some skill, might ultimately hope to redeem his bond and purchase his freedom, as he was often permitted to keep his earnings, only paying a tribute to his master in the meantime.[143] The *kitaba,* writing, or document of freedom, shall be granted to slaves in return for an amount stipulated in the bond. "And such of those whom your right hands possess as crave a writing, write it out for them,[144] if ye know any good in them, and give them of the wealth of God which he has given you."[145] Under this form of emancipation the slave is liberated upon payment of a future pecuniary compensation.

A second form of future emancipation, called *tadbir,*[146] is a verbal declaration of freedom made to a slave in the presence of two witnesses, which is to take effect on the occasion of the owner's

[141] Jakob, op. cit., 138, 151.

[142] *qayn.*

[143] *Kinship,* 118.

[144] "The slave in this case is called *mukatab* and also *mukatib;* and so is the master, the act being mutual . . . But the lawyers in the present day call the slave *mukatab* only; and the master, *mukatib.*" Lane's *Lexicon.*

[145] Sura 24: 33.

[146] lit., arrangement, disposition, plan.

death. "Thou art free at my death," or "thou art a *mudabbir*" is sufficient to establish a legal claim for freedom upon the decease of the master, the heirs having no power to seize the slave, nor any children born to him in the interval.[147]

Immediate emancipation,[148] as has been seen, might be granted to a slave gratuitously for special services rendered on the battlefield or in some domestic or other capacity. If a Muslim say to his slave: "Thou art free," or "Thou art *mu'taq*," or "Thou art consecrated to God," the slave becomes a free man.

Further, complete emancipation may be conferred on a female slave[149] for giving birth to a son who is claimed and acknowledged by the master as his own. When thus recognized the offspring[150] is free also.

Finally, the manumission of slaves is the legal penalty for breaking the fast of *Ramaḍan*, for a rash oath, etc.

Special blessings are attached to the manumission of slaves. When asked what act would take a man to paradise *Muḥammad* said: "Free a slave, or assist one in redeeming a bond of slavery." The same authority is credited with the following: "Whosoever frees a slave who is a Muslim, God will redeem every member of his body, limb for limb,

[147] If a man's property consists of three slaves, he can only dispose of one in this way—two-thirds must go to the heirs. Cp. MacDonald, *The Emancipation of Slaves Under Muslim Law.* In *American Monthly Review of Reviews,* March, 1900.

[148] *'ataq,* lit., power.

[149] *ummu'l-walad,* 'the mother of offspring.'

[150] *Istilad,* lit., 'the offspring's claim.'

from hell fire." It is asserted on the strength of tradition that the prophet emancipated sixty-three slaves himself.[151] A modern Arabian slave-holder will sometimes liberate his slaves after a few years, that is, "if their house-lord fears *Allah;* and then he sends them not away empty; but in Upland Arabia (where only substantial persons are slave-holders) the good man will marry out his freed servants, male and female, endowing them with somewhat of his own substance, whether camels or palm-stems."[152]

It is not impossible that *Muḥammad* was slightly acquainted with the slave laws of the Old Testament.[153] But while the Old Testament chiefly concerns itself with the manumission of enslaved Hebrew debtors, the legislator of Islam speaks of the emancipation of all slaves regardless of nationality.[154] Slavery, however, was too closely interwoven with the economic life of the Arabs to be set aside by the *Muḥammadan* lawgiver. The institution, although recognized in the *Qur'an,* is put on a more humane basis than in the 'Times of Ignorance,' kindness to slaves being enjoined as a religious obligation.

[151] Eduard Sachau, *Muḥammadanisches Recht nach Schafi'itischer Lehre* (1897), p. 131.

[152] Doughty, I, 554; cp. II, 140.

[153] Ex. 21: 2 ff.; Deut. 15: 12; Jer. 34: 15, 17; Ezek. 46: 17.

[154] R. Roberts, op. cit., p. 47.

CHAPTER VI

INTEREST

The taking of interest by the impatient creditor[1] greatly augmented the number of those reduced to a servile condition. An attempt is made in the earliest legislation to remedy the evil by the prohibition of interest on money loaned to an impoverished Israelite. "If thou lend money to any of my people with thee that is poor, that shalt not be to him as a creditor."[2] The loans contemplated in the present law are primarily intended for the relief of destitution brought about by misfortune, or debt, and not for the development of industry. Lending to the poor thus partakes of the nature of a charity. This is further borne out by a passage in Leviticus. 'And if thy brother grow poor, . . thou shalt relieve him. Take thou of him no interest[3] or increase[4] but fear thy God, that thy brother may live with thee. (Thy money thou shalt not give him for interest; and for increase thou shalt not give him thy victuals.) I am the Lord your God which brought you forth out of the land of Egypt, to give you the land of Canaan, and to be your God.'[5] To exact interest on loans made to the unfortunate and destitute would only increase the borrower's distress; and to do so was felt to be especially reprehensible

[1] *noshe.*
[2] Ex. 22: 25.
[3] *neshek.*
[4] *tarbit.*
[5] 25: 35–38.

for the reason that it would be taking advantage of a neighbor's need. The law of Exodus has its analogy in Deuteronomy where the prohibition of interest on money is extended to victuals and goods in general. 'Thou shalt not make thy brother[6] give interest, interest of money, interest of victuals, interest of anything which is subject to interest.'[7] But to a foreigner[8] 'thou mayest lend upon interest.'[9] From the standpoint of Deuteronomy there is nothing inherently wrong in such a limitation. Aliens temporarily or even permanently locating on Israelitish soil for the purpose of gaining a livelihood, who fail to identify themselves with the community in which they live, cannot claim the rights and privileges of a full-fledged citizen. Their own laws, moreover, did not prohibit 'usury.' This, of course, would naturally suggest their exclusion from the benefits of certain phases of Israelitish legislation, which, by the way, could only have originated in a non-commercial atmosphere.

According to Ezekiel a truly pious man is one who 'lendeth not at interest,[10] nor taketh any increase.'[11] To demand interest of any sort is denounced as a form of extortion. "Thou hast taken interest and increase, and thou hast greedily gained of thy neighbor's by extortion, and hast forgotten me, saith the Lord.'"[12] It is evident that such an estimate

[6] brother-Israelite.
[7] Deut. 23: 19.
[8] *nokri.*
[9] v. 20[a].
[10] *neshek.*
[11] *tarbit* 18: 8, 13, 17.
[12] 22: 12.

argues a comparatively undeveloped state of Hebrew commerce and finance in the pre-exilic period, which the prophet has in mind. The same attitude reappears in one of the later psalms. Only those are qualified to dwell on Zion,[13] who have not loaned out their money on interest.[14] Property acquired at the expense of a poor borrower lacks stability. "He that increaseth his substance by interest and increase shall gather it for him that will pity the poor."[15]

The Hebrew verb *'nashak'* signifies 'to bite.' It is thus used of a snake concealed by the wayside;[16] of the fiery serpents in the wilderness;[17] and of serpents in general.[18] The verb is also applied to false prophets "that bite with their teeth and cry, Peace; and against him that putteth not into their mouths they even prepare a sacred war" by resorting to a kind of sympathetic magic.[19]

A literal translation of Deuteronomy 23:20 would therefore read to the following effect: "thou shalt not make thy brother bite off, a biting[20] of silver, a biting of victuals, even a biting of anything off which one biteth."[21] The primary meaning of the noun seems to be something 'bitten off' from the principal. *Neshek,* then, denotes any amount over

[13] i. e., Jerusalem.
[14] Ps. 15:5.
[15] Prov. 28:8.
[16] Gen. 49:17.
[17] Num. 21:6, 8 f.
[18] Am. 5:19; Jer. 8:17; Eccles. 10:8, 11; Prov. 23:32.
[19] Mic. 3:5.
[20] *neshek.*
[21] Driver, *Deut.,* 266.

and above that of the original loan usually retained by the creditor.

Divergent opinions are held as to the precise meaning of *neshek* and *tarbit*. The passages just cited do not sharply differentiate between these two terms.[22] Lambert would hold that *neshek* more specifically applies to usury[23] in contradistinction to *tarbit*, or interest.[24] This distinction breaks down, however, in the light of such passages as Lev. 25:36 f., and Deut. 23:20, where *neshek* may also be equated with interest.[25] There is every reason to believe that *neshek* designates interest on money as over against the increase,[26] or additional amount to be paid by the borrower on the original loan consisting of the produce of the land.[27]

Records of loans occur with great frequency in the literary remains of Babylonia. Both money and grain were advanced, for the most part, to meet temporary embarrassment.[28] In their distress many of the smaller farmers borrowed of the temple storehouse grain at seed-time, or money to meet the expense of harvest labor.

[22] Lev. 25:36; Ezek. 18:8, 13, 17; 22:12; Prov. 28:8.

[23] exorbitant interest.

[24] *Revue des Études Juives*, XXXVI (1898), 204.

[25] Baentsch, *Ex.*, 202. "Usury," says Driver, "is not used in the Old Testament in the modern sense of the term, of exorbitant interest, but (in accordance with its general usage in old English) of interest generally (whether reasonable or exorbitant)."

[26] *tarbit*.

[27] Lev. 25:36 f.; Deut. 23:20. Cf. Baentsch, 428; Nowack, *H.A.*, I, 354; Frankenberg, in *H.K.A.T.*, *Prov.*, 153.

[28] Cp. Meissner, *B.A.P.*, 21 (no. 8), 24 (nos. 14–16), 26 (nos. 19–20), 27 (no. 22), 28 (no. 24).

The amount advanced might be of the nature of an accommodation or subject to a given rate of interest.

As a rule where no interest is charged it is expressly stated: 'Two and a half sheqels (and) sixteen *she* of silver as a loan without interest and four hundred and eighty *qa* of grain as a loan without interest *Sin-putra,* the son of *Pate* has borrowed from *Amat-Shamash,* daughter of *Aggananu.* At harvest-time he shall restore the loan without interest; in the gate of *Aggananu* he shall weigh the silver and measure out the grain.'[29]

Of the numerous expressions at the disposal of creditors waiving claim to the usual interest, it will suffice to note the following: *mash-nu-tug, mash-bi-nu-tug, mash-nu-ba-tug*[30] or *ḫar-nu-tug,* 'it (the loan) shall bear no interest.'[31]

The technical term for interest is *mash* = *ṣiptu* = increase. *Ḫar* = *ḫubullu,* in the sense of interest, also occurs in a few passages of the earlier period.[32] In later documents, however, it generally signifies 'interest.' Among the Assyrians *ḫubullu* and *rubu* are used interchangeably.[33]

The rate of interest varied in accordance with each locality: *ki-bi ib-al*[34]*-shu,* 'it shall bear interest

[29] Meissner, *Altbab. Recht, A.O.,* VII, 1, 15; cp. Clay, *B.E.,* Series A, v. VIII, pt. I, Tablet 93, 1. 8: *sha la ḫubullu i-na-ad-din,* "he shall pay without interest." Sixth year of Cambyses.

[30] Cp. Poebel, op. cit., p. 42.

[31] Huber, *Die altbab. Darlehnstexte,* 191 (in *Hilprecht Anniversary Volume*).

[32] Myhrman, *Sumerian Administrative Documents from the Second Dynasty of Ur* (2304–2188 B. C.), Series A, v. III, pt. I, 62–63.

[33] Johns, *A.D.D.,* III, 27.

[34] *al,* "to bear interest;" *al-ma* = *rabu;* Huber, op. cit., 192.

according to its place.'[35] But it is quite obvious that the customary rates obtaining at a given locality could be easily set aside by the individual in the most arbitrary manner, as will appear presently.

On money-loans an average rate of twenty per cent. is charged, the formula being: *mash* five *gin* one *gin-ta,* 'the interest upon five sheqels shall be one sheqel.'[36] The rate charged in another early document from Nippur is twenty five per cent. 'The interest upon four sheqels shall be one sheqel; in the month *Shig-ga* it shall be paid.'[37] Twenty five per cent. was the usual rate required by the Assyrians.[38] The Assyrian rate of interest, however, might vary from 12½–66⅔ per cent.[39]

Loans of grain and other cereals are usually subject to thirty-three and a third per cent: *mash* one *gur* one hundred (*qa*) *ta,* 'the interest upon one *gur*[40] shall be one hundred *qa.*'[41] As a variant to this formula we have, 'on the day that he repays sixty *qa,* he shall pay twenty *qa* interest.'[42]

Singularly enough there is no fixed rate of interest for mixed loans. In one instance where both money and grain are borrowed the rate is thirty-three and a third per cent. on the entire loan, while in another the money is subject to the usual rate for

[35] *shu-ba-ti;* cp. Johns, *B.A.L.C.L.,* 250.
[36] Myhrman, op. cit., 61.
[37] Huber, 193.
[38] Johns, *A.D.D.,* III, 23, 50–53, 55, 62, 65, 68.
[39] Ibid. 43 (12½%), 41 (33⅓%), 72 (40%), 71 (66⅔%).
[40] 300 *qa.*
[41] Huber, 191.
[42] Ibid., 192.

silver[43] and the grain to an increment of thirty-three and a third per cent.[44]

It is evident that in an agricultural community loans could not always be repaid in kind. To obviate the difficulty grain was often accepted as legal tender in accordance with a fixed ratio between silver and corn. 'If he (the debtor) have not the money to return, he shall give to the merchant (grain or) sesame, at their market value, for the loan which he took from the merchant and its interest,[45] according to the scale fixed by the king.'[46] In a deed of loan from ancient Babylonia, one *gur* is set down as the equivalent of one and a third sheqels.[47] According to another document four hundred and eighty *qa* are equal to one sheqel.[48]

Special provision is made for the farmer whose produce had been destroyed by excessive floods or through drought. The date fixed for repayment is changed and the interest abated for the current year. "If a man owe a debt and *Adad*[49] inundate his field and carry away the produce, or, through lack of water, grain have not grown in the field, in that year he shall not make any return of grain to the creditor, he shall alter his contract-tablet and he shall not pay the interest for that year."[50]

[43] 20%.
[44] Huber, 217.
[45] *ṣi-ib-ti-shu.*
[46] *C.H.*, 51.
[47] Huber, 194.
[48] Ibid., 193.
[49] the storm god.
[50] *C.H.*, 48.

There are not a few examples of loans which are really nothing more than advances of money or other commodities to persons temporarily embarrassed. For loans of this class no interest is charged, provided the principal be returned on or before a certain date[51] stipulated in the contract: 'three sheqels of silver—interest it shall not bear. After harvest interest shall be paid.'[52] So again, A borrows 'fourteen and a half sheqels of silver. In the month of *She-kin-kud*[53] it shall be weighed and returned. If it is not repaid (by then), double[54] the amount must be paid.'[55] A similar penalty is imposed in the Persian period in case of default. "Sixty *gur* of dates, due from *Itti-Bel-abnu* . . to *Bel-nadin-shumu,* son of *Murashu.* In the month of Kislev[56] of the twenty second year[57] of King Artaxerxes he shall deliver (give) the dates, that is to say, sixty *gur,* in Susa, according to the measure of one *pi* one *qa.*[58] If at that time he shall not have delivered the dates, i. e., sixty *gur,* he shall give one hundred and twenty *gur* of dates at the canal *Kabaru* in the month of *Shebaṭ* of the twenty second year."[59]

To exact interest on loans of accommodation was evidently regarded as a penalty for nonfulfilment of the contract and as a species of insurance against

[51] (1) a definite month (*Shig-ga, Gud-si-su, Shu-kul*), (2) a definite day (New Year). Huber, 203.
[52] Ibid., 199.
[53] the month of harvest.
[54] *tab* = *shanu* = to double, to pay interest.
[55] Huber, 202.
[56] *Kislimu.*
[57] 442 B. C.
[58] 37 *qa.*
[59] *B.E.,* Series A, v. IX, 33.

the loss of capital from negligence or incompetency. According to Assyrian law 'interest shall accrue at twenty five per cent.'[60] for non-payment at the time specified.[61] Other rates were thirty-three and a third and one hundred per cent.,[62] thus showing that the rate of interest in such cases was far from constant. From twenty[63] to one hundred and twenty[64] days were allowed as the period of grace during which no interest was charged.[65]

It will be borne in mind that in loans of this character the money was not lent as an investment to bear interest[66] but merely as a charitable act toward a person in need. The interest charged was a deterrent penalty to insure prompt payment.

However, we do not mean to imply that money-lending proper did not exist. As a matter of fact an exorbitant rate of interest is frequently exacted by the avaricious money-lender.

Before passing on, a word remains to be added with regard to the Babylonian method of calculating

[60] *ana rebutishu irabbi*, "it shall increase to a quarter of itself." Johns, *A.D.D.*, v. III, 23.

[61] Ibid., 47 (no. 14), 67 (no. 45), 71 (no. 52).

[62] Ibid., 66 (no. 43), 49 (no. 17), 58 (no. 31).

[63] The period of grace given in two earlier contracts is fifteen and sixty days respectively. Meissner, *B.A.P.*, 24 (no. 15), 26 (no. 20). In one case it is five days. Johns, *B.A.L.C.L.*, 253.

[64] A period of ten months is named in an ancient contract from Nippur. Huber, 195 b.

[65] Johns, *A.D.D.*, III, 48 (no. 16), 47 (no. 15), 46 (no. 11), 61 (no. 35), 44 (no. 8), 45.

[66] "That was done in quite another way. The lender entered into relationship with an agent to whom he furnished capital and who traded with the money and repaid it with interest." Johns, *B.A.L.C.L.*, 251. Compare Myhrman, op. cit., p. 57. (Plate 6, no. 13.)

interest. From the data at our disposal it appears that interest was reckoned by the month, and not by the year. Thus in the early period interest is stipulated for on money-loans at the rate of ten and twenty per cent. per month respectively.[67] Grain rates are still higher, thirty-three and a third per cent. being required for each month. Numerous examples might be adduced to prove that interest, unless otherwise stated, was also placed on a monthly basis by the Assyrians. It will be well to cite the following: 'five sheqels per month on four minas,[68] two sheqels per mina per month,[69] four sheqels per mina per month,[70] four sheqels per month on a half mina,[71] one mina five sheqels per month on five and a half minas.'[72]

While the rate of interest is considerably lower in late Babylonian times, the method of computation seems to have remained: 'Monthly upon one mina, one sheqel of silver shall increase.'[73]

That the lending of money and victuals at an exorbitant rate of interest was a widespread practice in the pre-*Muḥammadan* business world is attested by a few poetic fragments of the ancient Arabs. The dwellers of the desert who came to the cities on busi-

[67] Huber, 195, 197, 218.

[68] 25% per annum.

[69] 40% per annum.

[70] 80% per annum.

[71] 160% per annum.

[72] 200% per annum. Johns, *A.D.D.*, III, 25.

[73] i. e., ⅕ or 20% per annum. Cf. Clay, *B.E.*, v. VIII, pt. I, 30; cp. Pinches, op. cit., 444, 461; Ziemer, *B.A.*, v. III, 446; Kohler and Peiser, IV, 53.

ness were often thrown into great straits by the avaricious money-changers. Great joy is expressed by the man who is able to outwit and foil his creditor. 'But I promised an enormous gain; thereupon he turned around without knowing that he must needs lose all through the transaction. And he took a sheet of paper[74] and looking at his witnesses he counted out with both hands how much of my money would be necessary for him to receive at the expiration of the time fixed for payment; but I believe that we shall not see each other again for many years!'[75] The outcome of such transactions was that the lender seldom obtained all he had bargained for. 'Day and night I continue to put him off till he finally becomes so wearied that he accounts himself fortunate to receive a portion of the debt without further gain.'[76] Although originally a keen trader himself, *Muḥammad's* sense of justice soon rebelled against the extortionate business methods of those quasi-brokers, as evidenced by the *Qur'anic* prohibition of usury. 'Those who devour usury[77] shall arise in the Last Day only as he ariseth whom Satan has infected by his touch; and that is because they say, 'selling is only like usury,' but God has

[74] on which the debt was recorded.

[75] Nöldeke, *Beiträge zur Poesie der alten Araber*, 190, 189.

[76] Ibid., 191.

[77] *Riba*, 'increase,' from the verb *raba*, 'to increase, to grow.' Compare *marbit* (Lev. 25: 37); *tarbit* (Lev. 25: 36; Ezek. 18: 8, 13, 17; Prov. 28: 8), and talmudic *ribbit*. Gesenius, *Handwörterbuch* (1905), p. 415. According to the *Qur'an*, *riba* refers to a species of sale (*Verkaufswucher*), and not to a loan-obligation. That the term was subsequently transferred to the latter is ascribed to foreign influence. So Cohn in his monograph, *Der Wucher in Koran, Ḥadith und Fiqh* (1903), 5, 22 f.

made selling lawful and usury unlawful; and whosoever receiveth this admonition from his Lord and abstaineth from it, shall have pardon for the past and his lot shall be with God. But those who return to usury shall be given over to the Fire,—therein to abide forever.'[78] The rate demanded by the creditor must have been exceedingly high. 'O ye who believe, devour not usury doubly doubled, but fear God!—And what ye put out upon *riba*[79] that it may increase with the wealth of men, it shall not increase with God; but what ye put out in alms,[80] desiring the face of God—these shall gain double.'[81] It will be seen from the context that usury and almsgiving stand in close relation to each other. To quote another passage: "God shall blot out usury, but shall make almsgiving profitable for God loves not any sinful misbeliever."[82] Obviously these transactions chiefly affected the poorer classes of Islam, and thus it becomes intelligible why almsgiving is enjoined as one of the highest virtues. The more prosperous members of the new community[83] are not to exact interest from the unfortunate and poverty-stricken converts of *Al-Islam*. But to combat the evils of money-changing and the Arab's insatiable desire of gain was no easy task. Tradition,[84]

[78] Sur. 2: 276–277.

[79] usury.

[80] *Zaka* (Heb. זכה, Aram. דכא, Assyrian *zaku*, 'to be pure, free'), lit., 'purity,' or a portion of one's substance given in order to purify the remainder. The term occurs again in Sur. 2: 277.

[81] Sur. 3: 125; 30: 38.

[82] Sur. 2: 277.

[83] It is noteworthy that the *Qur'anic* passages cited (except 30: 38) belong to the Medinese period.

[84] *Buḫari*, IV, 28.

for instance, relates that the prophet concluded his last revelation by adding: 'O ye who believe, remit the balance of usury, if ye be believers!'[85] Other sayings attributed to *Muḥammad* are as follows: "Verily the wealth that is gained in usury, although it be great, is of small advantage.—Cursed be the taker of usury, the giver of usury, the writer of usury, and the witness of usury, for they are all equal."[86]

According to *Muḥammadan* law it is illegal to give or receive interest of any kind for a loan or on account of credit, and to exchange one object for another of the same species[87] differing in quantity. *Riba,* as defined in Hamilton's *Hedaya,*[88] is "an excess in one of two homogeneous articles opposed to each other in a contract of exchange, and in which such excess is stipulated as an obligatory condition on one of the parties," without offering an equivalent in return. The sale, therefore, of two heterogeneous articles[89] does not constitute usury, since the usuriousness of an excess is by rate united with species. *Ash-Shafi'i,*[90] following a sixfold division[91]

[85] Sur. 2: 279.

[86] Hughes, op. cit., p. 656.

[87] 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like and from hand to hand! But if these species be not alike, then sell as you wish, provided it be done from hand to hand.' Translated from *Muslim* VII, 10, *Buḫari* IV, 16, by Cohn, op. cit., 26.

[88] Second edition (1870), chap. VIII, 289.

[89] that is, two loads of barley for one load of wheat and vice versa.

[90] 767–820.

[91] 1. gold (*dhahab*), 2. silver (*fiḍḍa, wariq*), 3. wheat (*burr, ḥinta*), 4. barley (*sha'ir*), 5. dates (*tamr*), 6. salt (*malḥ*). Cohn, p. 1.

of tradition respecting certain objects coming under this head, would restrict usury to money and victuals.

In order to protect the poorer classes *Muḥammad* went to the length of prohibiting all forms of usury. He thus overlooked the purely financial side of trade, which necessarily fell into the hands of Jews and Christians. An attempt was made apparently by the Muslim jurists to evade the *Qur'anic* prohibition of usury by the introduction of two kinds of promissory notes, the *dayn* and the *salam wasalaf*. The *dayn* "is a promise to restore merely the amount lent, at the end of a specified term. In case the debtor fails to keep his agreement, the *Ḥanifite* and the unorthodox *She'ite* sects insist . . that the creditor may claim no interest; but the *Shafi'ites* more rationally permit him to convert the contract immediately into the *salam wasalaf*." In the latter "the debtor promises to deliver goods or money to a stipulated amount over that actually borrowed, and the creditor contrives to get his interest."[92] It will be noticed that both forms of contract are to be found in the *Book of Sales*,[93] the lender being looked upon as the buyer and the borrower as the seller of the amount agreed upon between the contracting parties.

Despite the injunctions of the prophet, money-lending at usurious rates still continues. The creditors, of course, are mostly foreigners. "The rate

[92] Chester, *On Early Muslim Promissory Notes*, in *P.A.O.S.*, April, 1893, p. XLIV. For further evasions of the law relating to usury, compare Cohn, 31.

[93] *kitabu-l-buyu'*.

is fifteen in the hundred for twelve months, paid in money; but if yielded in kind,—the payment of the poor man!—for every real they are to receive a real and a half's worth, in dates or corn, at the harvest rates. This fruit they lay up till they may sell it, later in the year, at an enhanced price to the poor nomads.[94]—In Syria the Muslims lend not, for conscience sake; but the people are greedily eaten up by other caterpillars, the Jew and the Christian: twenty-five yearly in the hundred is a 'merciful' price among them for the use of money.''[95]

[94] Among the Beduin no usury is taken from a fellow tribesman: ''Satisfaction may be yielded (and the same number will be accepted) in any year to come, of the natural increase of his stock, . . for the malicious subtlety of usury is foreign to the brotherly dealing of the nomad tribesmen.'' Doughty, op. cit., I, 317.

[95] Ibid., v. II, 387–388.

CHAPTER VII

PLEDGES AND SECURITY

In ancient Israel interest was conceived of as a social evil because of its tendency to a gradual impoverishment of the masses and a corresponding enrichment of the upper classes. It is no great exaggeration to say that the enforcement of the pawnbroker's claim had an equally disastrous effect upon the poorer constituency of the population. The legislator accordingly seeks to confine the practice of taking pledges within certain well defined limits. An outer garment[1] taken in pledge shall be restored to the owner at sunset, "for that is his only covering . . . wherein shall he sleep" without it?[2] Pledging a garment was a sign of extreme poverty in the majority of cases as evidenced by the repetition of this law in Deuteronomy: 'And if he be a poor man, thou shalt not sleep in his pledge. In any case thou shalt deliver him the pledge again when the sun goeth down; that he may sleep in his own raiment and bless thee; and it shall be (for) righteousness[3] unto thee before the Lord thy God.'[4]

[1] *śalma:* quadrangular in shape and corresponding to the modern *'abaya.*

[2] Ex. 22: 25.

[3] *ṣedaqa,* right conduct (Gen. 15: 6; Ps. 106: 31); a charitable act (Ben Sira 7: 10; 12: 3; Tob. 12: 9); Arabic *ṣadaqa,* alms. "*Ṣadaqa* is the willing God's-tribute and godly kindness of an upright man, spared out of his own necessity, to the relief of another." Doughty, I, 446.

[4] 24: 12–13.

Indispensable household articles used in the preparation of food are not to be taken as pledges. 'No man shall take the handmill[5] or the upper millstone[6] in pledge, for he taketh a life in pledge.'[7] The same principle obtains with regard to a widow's garment.[8] Probably this was her sole possession. Further restrictions are placed on the arbitrary power of merciless creditors in the event of bankruptcy, or the non-payment of a loan on the part of a debtor. A creditor may not go into the house of the debtor in such a case for the purpose of selecting and seizing his pledge: 'thou shalt stand outside and the man to whom thou lendest[9] on security shall bring out the pledge unto thee.'[10] These enactments were unquestionably called forth by social maladjustments. Illustrations to this effect are by no means wanting in the prophetical literature. One of the cardinal sins of Israel in the days of Amos is the outrageous seizure of garments and produce for unjust fines imposed by corrupt judges. The offenders shall be punished 'because they spread out beside every altar[11] garments taken in pledge, and the wine of such as have been fined they drink in the houses of their gods.'[12] But 'if the wicked restore

[5] lit., both millstones. The handmill consisted of two flat circular stones, the upper stone being set in motion by means of a handle attached to the upper surface.

[6] "the chariot," or rider.

[7] Deut. 24: 6.

[8] *beged.* Deut. 24: 17[b].

[9] *noshe,* from *nasha,* 'to lend or borrow on security.'

[10] 24: 11. Cf. Buhl, op. cit., 100.

[11] The reference is to sacrificial meals (banquets). 1 Sam. 3: 3; 9: 12–13; Deut. 14: 26 f.; cp. Hos. 8: 11; 10: 1–2, 8; 12: 11.

[12] Am. 2: 8.

the pledge, give back whatever he had robbed, walk in the statutes of life, . . he shall surely live, he shall not die.'[13] Ezekiel's insistence on the duty of restoring pledges is presumptive evidence, however, that the statutes of Exodus and Deuteronomy were more honored in the breach than in the observance.[14] The rich and the prosperous, it seems, are ever prone to seize upon the poor and take possession of their goods by virtue of an execution without sufficient cause. 'For thou hast taken in pledge[15] thy brother without cause and stripped the clothing[16] of those that are half naked.'[17] And woe to the man who would pledge himself for the payment of another's debt in the face of such rapacity and greed![18] "Be not thou (one) of them that strike hands,[19] or of them that are sureties for debts."[20] To assume a responsibility of this kind is an indication of a want of good judgment. 'A man void of understanding[21] striketh hands, and becometh surety in the presence of his neighbor.'[22] Any one who is good-natured enough to allow himself to be ensnared in the meshes of friendship must do his

[13] Ezek. 33: 15.

[14] 18: 7, 12, 16.

[15] 'seized.'

[16] mantle; cp. Job 24: 7.

[17] Job 22: 6; cp. Isa. 20: 2.

[18] Prov. 11: 15; cp. 10: 5.

[19] The striking of hands as a conventional business form has its analogy in the part played by the shoe in similar transactions. Ruth 4: 7; Ps. 60: 8. Compare the third form of Arabic *bay'*, to make a contract with any one by the striking of hands.

[20] 22: 26.

[21] 'heart.'

[22] Prov. 17: 18; cp. 20: 16 (27: 13).

utmost to pay the debt at the earliest opportunity. 'My son, if thou be surety for thy neighbor[23] deliver thyself for thou art come into the hand of thy neighbor. . . Give no sleep to thine eyes, nor slumber to thine eyelids. Deliver thyself as a gazelle (from the hand of the hunter) and as a bird from the hand of the fowler.'[24] A more humane and less pessimistic conception of the actual dangers of suretyship appears in the wisdom literature, where the giving of a pledge as security for one in distress is regarded as an act of charity.[25]

The prohibition of loans on interest,[26] as well as the character of the pledges, above referred to, presuppose a rudimentary stage of commercial and monetary transactions. And yet this is simply a reflex of conditions. The dominant forms of industry in pre-exilic times are cattle raising and agriculture. It is only when the exile is reached that the life of the people takes on a different aspect. While there may have been a tendency, even in ancient Israel, toward the formation of a distinct class of traders and merchants, this tendency appears to be particularly strong among the returning exiles. The temptation to speculate in real estate must have been considerable in Nehemiah's day, especially when land could be easily appropriated at the expense of the common people.[27] 'Then there arose a great cry of the people and of their

[23] 'friend,' 'companion.'
[24] Prov. 6: 1–5; cp. Sira, 8: 15–16.
[25] Sira, chap. 29.
[26] Ex. 22: 25; Deut. 23: 19; Lev. 25: 36 f.
[27] Neh. 5: 1–13, 16a.

wives against their brethren, the Jews. And there were those that said, we are pledging[28] our sons and our daughters that we might receive grain and eat and live. Some also there were that said, we are mortgaging[29] our fields, vineyards, and houses that we might receive grain because of the dearth. There were also those that said, we have borrowed money to pay taxes upon our fields and vineyards . . and lo, we bring into slavery our sons and our daughters and some of our daughters are brought into slavery (already), neither is it in our power to help it for other men have our fields and vineyards.'[30] The work on the city wall was done for the most part by the common people who had volunteered their services out of patriotism and loyalty to the cause of religion. They had exhausted their slender resources in the prosecution of the tasks assigned to them. The failure of the crops in the following season brought in its rear a host of 'usurious' and impatient creditors desirous of appropriating the pledges and foreclosed mortgages of the insolvent debtors. In some cases the children of poverty-stricken parents were enslaved. Others must soon be delivered over to the creditors. Loud complaints are heard among the poor and the matter is eventually brought to the attention of the governor. The nobles of the city are called to account by Nehemiah and upbraided for their exactions of their poorer

[28] Read עֲרֵבִים instead of רַבִּים. Cf. Siegfried, ad loc., in *H.K.A.T.*; Bertholet, in *K.H.K.A.T.*

עֲרֵבִים.

[30] 5: 1–5.

brethren. Had he not loaned money and corn to the poor himself without requiring either pledges or interest at their hands? 'Restore, now, to them, even this day, their fields, their vineyards, their oliveyards, and their houses and the requirement[31] of the money and of the grain, the wine and the oil which ye as creditors may require of them.'[32] The appeal proves effectual, the creditors agreeing to restore the pledges and to remit the debts.

The mortgaging of lands and houses marks an advance on previous business methods. It would appear that loans on the security of a pledge are not forbidden as such, provided creditors abstain from oppressing the poor. This was frequently done by the giving of bribes to the administrators of justice.[33]

Assignments of property in satisfaction of a debt may be predicated for early Babylonian times on the strength of several passages from the Sumerian land-laws.[34] 'If he bring back the money, he can re-enter his house; if he bring back the money, he can take possession of his field; if he bring back the money, he can plant his garden again; if he bring back the money, he can take away his maid-slave; if he bring back the money, his slave shall be restored to him.—On account of the interest of his money he (the debtor) shall cause house, field,

[31] ומאת = ומשאת. Cf. *H.K.A.T.*, ad loc.
[32] 5: 11.
[33] Ex. 23: 6–8; Deut. 16: 18–20; Lev. 19: 15.
[34] *ana ittishu.*

garden, male or female slave, to stand on deposit."[35] The pledges here contemplated are antichretic, that is to say, the creditor enjoys the usufruct of the property as a set-off against the interest due on the loan. According to §49 of the Code a borrower might hand over a field as an antichretic pledge without entirely relinquishing his right of ownership to the produce. "If a man obtain money from a merchant and give (as security) to the merchant a field to be planted with grain and sesame (and) say to him: "Cultivate the field, and harvest and take to thyself the grain and sesame which is produced;" if the tenant raise grain and sesame in the field, at the time of harvest, the owner of the field shall receive the grain and sesame which is in the field and he shall give to the merchant grain for the loan which he had obtained from him and for the interest and for the maintenance of the tenant."[36] Since only the amount of the debt and its interest was to be returned to the creditor, the surplus of the produce naturally went to the owner of the field.[37] Examples of antichretic loans are frequently met with in Assyrian times. To illustrate: 'C lends two minas of silver, Carchemish standard, to D. In lieu of the two minas of silver, a plot of twelve homers of land in the outskirts of Nineveh, *Kurdi-Adadi,* his wife, in all seven people, and twelve homers of land, are pledged. On the day that one returns the money, the other shall release the land and people. Dated the first of Marches-

[35] Meissner, op. cit., 9; cp. Johns, *B.A.L.C.L.*, 262.
[36] *C.H.*, §49.
[37] Ibid., 50; cp. Jeremias, *Moses and Hammurabi,* 19.

van,[38] B. C. 694. Ten witnesses.'[39] So again, 'C lends sixteen minas of silver, royal standard, to D. In the month Tishri, he shall pay the money in full; if not, interest shall be two sheqels per mina per month. A vineyard and nine slaves are pledged as security. If they die or run away, the loss shall be D's. The day that D shall refund the money, with the interest, his slaves and vineyard shall be released. Dated, the ninth of Ab, B. C. 688. Six witnesses.'[40] Or again, 'In lieu of twenty minas of silver, Carchemish standard, D pledges twenty-seven souls, together with their fields, their houses, their plantations, their sheep, and family possessions in the city *Shadi-Samalla,* in the district of *Rimusi.* Dated, the twenty-seventh of *Ululu,* B. C. 681.'[41] Antichretic pledges also occur in later Babylonian times.[42] On a house given in pledge no rent could be collected from the antichretic creditor as the rent was a fair equivalent for the interest of the loan. Hence the phrase: 'there shall be no rent for the house, and there shall be no interest.'[43] But pledged property might rapidly depreciate in value. A date would therefore be fixed for repayment as a protection to the creditor. In a tablet dated in the reign of Evil-Merodach the borrower is required to take back his pledge[44] at the end of three years.[45]

[38] *Araḫsamna.*
[39] *A.D.D.,* III, p. 78, no. 58.
[40] Ibid., p. 100, no. 66.
[41] Ibid., p. 80, no. 59; cp. Pinches, op. cit., 449.
[42] i. e., Evil-Merodach, Nebuchadrezzar, *Nabuna'id,* Darius and others. Kohler and Peiser, III, 29 f.
[43] Ibid., I, 16 f., 22; III, 31.
[44] house.
[45] Kohler and Peiser, III, 29.

To insure repayment the security given must ordinarily be of the nature of a first mortgage. The borrower often guarantees that no other creditor has a lien upon the object pledged. "Twenty *gur* of dates due to *Rimut-Ninib,* son of *Murashu,* by *Biba,* son of *Belshunu,* who is the overseer of *Bit-Sin-maqir.* In the month of Tishri of the third year, the dates, namely, twenty *gur,* he shall pay according to the measure of *Rimut-Ninib,* in the town *Bit-Ikla'.* His field, cultivated and uncultivated, his fief estate situated on the bank of the canal *Ḫarripiqud,* which is in *Bit-Ikla',* is held by *Rimut-Ninib* as a pledge for the dates, namely, twenty *gur.* Another creditor shall not have power over it until the claim of *Rimut-Ninib* has been satisfied."[46] For obvious reasons first mortgages are nearly always insisted upon except in a form of business known as after-pledge, in which second mortgages may be secured to their respective holders by means of a rather complicated and circuitous method.[47]

Guarantees for debt assumed by one or more individuals are very common in later Babylonian jurisprudence. Of these joint responsibility is the more frequent. "One hundred and thirty-nine *gur* of dates, due from *Shamash-shum-iqisha,* and *Belani,* sons of *Kidin,* to *Bel-nadin-shumu,* son of *Murashu.* In the month of Tishri of the twenty-ninth year they shall deliver the dates, i. e., one hundred and thirty nine *gur,* in the storehouse according to the measure

[46] Dated in the second year of Darius II (424–404 B. C.). Clay, *Business Documents of Murashu Sons,* Series A, v. X, p. 33.

[47] Kohler and Peiser, I, 20 ff., II, 50; cp. Johns, *B.A.L.C.L.,* 267–268.

of *Bel-nadin-shumu.* Their orchard, . . situated on the bank of the canal *Ḫarripiqud,* is held by *Bel-nadin-shumu* as pledge for the dates, i. e., one hundred and thirty nine *gur.* No other creditor has power over it until the claim of *Bel-nadin-shumu* has been satisfied. One is security (responsible) for the other that the debt shall be paid (literally, "that he will repay the loan").[48]

If called on to pay, the guarantor is sometimes reimbursed by the debtor.[49] In default of repayment the guarantor was empowered by law to seize the defaulting debtor and his family.[50]

That the creditor had the power to seize the defaulting debtor in earlier times may be inferred from the Code.[51] But he was at no time to abuse his powers. For arbitrarily attaching a man's goods the creditor shall forfeit the amount lent. "If a man hold a (debt of) grain or money against a man, and if he take grain without the consent of the owner from the heap or the granary, they shall call that man to account for taking grain without the consent of the owner from the heap or the granary, and he shall return as much grain as he took, and he shall forfeit all that he has lent, whatever it be."[52] Unlawful distraint is subject to a fine of one-third of a mina of silver. "If a man do not

[48] Dated in the twenty-ninth year of Artaxerxes I (464–424 B. C.), or 435 B. C. Cf. Clay, *B.E.*, v. IX, p. 35, no. 17.

[49] Kohler and Peiser, III, 28.

[50] Ibid., II, 72 ff. The guarantor, if related to or otherwise specially interested in the debtor, would hardly make use of such a privilege.

[51] §§114–115. Cp. Meissner, *Altbab. Recht, A.O.*, VII, 1, p. 16.

[52] *C.Ḫ.*, §113.

hold a (debt of) grain or money against a man, and if he seize him for debt, for each seizure he shall pay one-third mina of silver.''[53] The same applies to the man who unlawfully distrained the ox of another. Indeed, an animal of this character is not to be seized for debt under any circumstances. ''If a man seize an ox for debt, he shall pay one-third mina of silver.''[54] If the creditor, on the other hand, levies a distraint on the insolvent debtor in a legitimate manner and the one seized die in his house by a natural death, ''that case has no penalty.''[55] In the event of such a person's death from abuse, the distrainer was to be severely punished. ''If the one seized die of abuse or neglect in the house of him who seized him, the owner of the one seized shall call the merchant to account; and if it be a man's son (that he seized) they shall put his son to death; if it be a man's servant (that he seized) he shall pay one-third mina of silver[56] and he shall forfeit whatever amount he had lent.''[57]

Forcible seizure is unlawful. In one case the great Babylonian legislator intervenes in behalf of a man who had unwittingly fallen into the clutches of a clever usurer, eager to foreclose on the mortgage and seize the crop at the earliest opportunity. ''Thus saith *Ḫammurabi: Lalum,* . . hath informed me saying, ''*Ani-ellati,* . . hath laid claim to certain land which I have held from (days of old), and the

[53] *C.Ḫ.*, §114.

[54] Ibid., §241. According to Job 24: 3 it is iniquitous to 'take the widow's ox for a pledge.'

[55] *C.Ḫ.*, §115.

[56] Or twenty sheqels; the usual price of a slave.

[57] *C.Ḫ.*, §116.

crop of the land (he hath taken)." . . . Now a tablet hath been found in the palace, and (it ascribeth) two *gan* of land unto *Lalum.* Thou[58] shalt examine into the matter and, if *Ani-ellati* took (the land) on pledge from *Lalum,* . . thou shalt return his pledge unto him, and thou shalt punish *Ani-ellati* who took (the land) on pledge."[59] On another occasion a money-lender must answer to the charge of having refused to part with certain mortgaged property, which had been already redeemed. "Thus saith *Ḫammurabi: Enubi-Marduk,* who received the pledge from them (the debtors), shalt thou send into my presence."[60]

Very little is known about pledges in pre-*Muḥammadan* times.[61] Pledge-giving was probably regarded as a legitimate form of business even before the advent of the prophet. It is distinctly recognized as such in the *Qur'an.* "O ye who believe, if ye engage in debt for a stated time, then . . . let a scribe write it down between you faithfully; . . . unless, indeed, it be a ready-money transaction between you, . . . but if ye be upon a journey and ye cannot find a scribe, then let a pledge[62] be taken."[63] *Muḥammad's* own example in this respect, cited by *Buḫari,*[64] presumably rests

[58] e. g., *Sin-idinnam,* a provincial governor.
[59] King, op. cit., 24.
[60] Ibid., p. 27.
[61] Cp. Nöldeke, op. cit., 189, 197.
[62] *rahan* (*rahn*); cp. Sur. 52: 21; 74: 41.
[63] Sur. 2: 282–284.
[64] Chester, loc. cit., p. XLV.

on the established precedents of a growing business community.[65] The latter represents him as giving his coat of mail in pledge for the payment of a loan of grain. The chief exponents of Muslim law concur in deeming pledges legal, but "no pledge shall be distrained for debt."[66] The pledge, of course, is held by the creditor as security for the debt incurred by the debtor, the former being entitled to the use or usufruct of the pledged property until the loan is repaid. In more modern times land is frequently given as security with disastrous results to the impoverished farmers. "The soil is fallen thus into servitude: and when the mostly honest (Muslim) husbandmen-landowners have at last mortgaged all for their debts; and are become tenants at will to those extortioners, they begin to forsake the villages."[67]

[65] Mecca and Medina.
[66] *Hedaya*, second edition, 630.
[67] Doughty, op. cit., II, 388.

CHAPTER VIII

THE SOCIAL PROBLEM AS VIEWED BY THE PROPHETS

The attitude of the prophets regarding landed property, especially in its relation to the social problem, is of the greatest interest. In the Northern Kingdom Ahab is rebuked by Elijah for treacherously seizing the land of Naboth. The judicial murder of a fellow citizen who had refused to sell the family inheritance shall surely be visited upon the heads of the guilty offenders. "Hast thou murdered and robbed? . . In the place where the dogs licked up Naboth's blood shall they lick up thine also."[1] The moral indignation of the prophet rises to the dignity of a national tragedy ending in the subversion of the house of Ahab.[2] In carrying out his programme Jehu had the support of the founder of a remarkable sect advocating a return to the simple nomadic life of the desert.[3] A reactionary movement of which the Rechabites were the formal expression had set in among the lower classes against the encroachments of Canaanitish culture and its concomitant evils.[4] But Canaanitish culture and commercialism had come to stay, and the movement failed to achieve any permanent results. A grasping and usurious spirit had taken possession of the upper classes. Insolvent debtors and their

[1] 1 K. 21: 19.
[2] 2 K. 9: 24 f.
[3] 2 K. 10: 15 f.
[4] Jer. 35; cp. 1 Chron. 2: 55.

families were oppressed and enslaved. 'Now there cried a certain woman of the sons of the prophets unto Elisha, saying, Thy servant my husband is dead; and thou knowest that thy servant did fear the Lord: and the creditor has come to take unto him my two sons to be bondservants.'[5] The creditor will agree to no compromise, or to the remission of the debt even if appealed to by the venerable successor of Elijah. And the best that the sympathetic prophet can do is to procure the means of satisfying the tyrant's claim: "sell the oil and pay thy creditor and live thou and thy children of the rest."[6] Innocent men[7] are sold into slavery for the trivial debt of a silver piece or a pair of shoes.[8] Justice is at a premium in the land.[9] Bribes are given to the judges by unscrupulous creditors.[10] Those wishing to defend their cause are repelled: "Yea, the needy in the gate[11] they thrust aside."[12] Greedy corn merchants anxious to resume their profitable business are asking: 'When will the new moon be gone that we may sell grain and the sabbath that we may offer corn?"[13] Not content with selling 'the refuse of the corn' for a high price 'they are diminishing the ephah[14] and enlarging the sheqel[15] and provid-

[5] 2 K. 4: 1.
[6] 2 K. 4: 7.
[7] *ṣadiq.*
[8] Am. 2: 6b; 8: 6a.
[9] Am. 5: 10.
[10] Am. 5: 12a; cp. 1 Sam. 12: 3.
[11] 'court.'
[12] Am. 5: 12b.
[13] Am. 8: 5a.
[14] 21.26–40.62 quarts. Benz. H.A., 183; Nowack, *H.A.*, I, 203.
[15] silver sheqel = 14.55 grains (= $.60); sheqel in gold = 16.37 grains (= $10.80).

ing false balances."[16] Israel has followed the example of the Canaanites in the fortified cities and degenerated into a nation of dishonest merchants. 'Canaan[17]—in his hand are false balances, he loves to defraud.[18]—Therefore since ye trample upon the weak and take from him exactions[19] of grain—ye have built houses of hewn stone but ye shall not dwell in them; ye have planted vineyards of delight but ye shall not drink wine of them.'[20] The day of judgment is at hand.[21] The removal of boundary stones on the part of grasping officials, so characteristic of the land-grabbing tendencies of the upper class under the Hebrew monarchy, shall not go unpunished. 'The princes of Judah were like them that remove the landmark;[22] I will pour out my wrath upon them like water!'[23] Lamenting against the cruel practices of his contemporaries, Micah exclaims: 'Woe to them that devise iniquity . . . upon their beds! When the morning is light they practice it because it is in the power of their hand. And they covet fields and rob (them); and houses

[16] Am. 8: 5b.

[17] 'Merchant.' 'Israel,' so Nowack, ad loc., in *H.K.A.T.*

[18] Hos. 12: 8(7); cp. v. 9.

[19] 'tax.'

[20] Am. 5: 11.

[21] Am. 4: 1–2; 5: 27.

[22] "Cursed be he that removeth his neighbor's landmark." Deut. 27: 17; cp. 19: 14; Prov. 22: 28; 23: 10; Job 24: 2. In the *Shurpu* series we meet with a similar offence among a list of possible sins which the average Assyro-Babylonian might commit: "Has he drawn a false boundary, not drawn the right boundary? Has he removed the limit, mark, or boundary?" Jastrow, *R.B.A.*, 308. Some Arabs "will tell thee sooth—as they would not falsify landmarks—within their own diras." Doughty, I, 423.

[23] Hos. 5: 10.

and take (them) away and they defraud a man and his house, even a man and his heritage.'[24] Mothers are ejected from their homes and forever separated from their children, who are ruthlessly sold to foreigners.[25] But the expropriation of poor proprietors accomplished by assiduous plotting and violence will soon be followed by the dispossession of the cruel grandees themselves.[26] Their lands shall be surveyed and divided among the Chaldeans: 'We are utterly spoiled; he hath changed the portion of my people: how he hath departed from me! Surely turning away, he hath divided our fields (among others). Therefore thou shalt have none to cast a measuring-line[27] by lot[28] in the congregation of Jahwe.'[29] The absorption of small holdings by wealthy landowners has apparently reached its climax in the age of Isaiah. Indeed, land-grabbing is placed in the very forefront of Judah's iniquities by the prophet. 'Woe unto them that join house to house, that lay field to field, till there is no room left and ye are made to dwell[30] alone within the land.'[31] Cruel evictions were an every-day occurrence.[32] Farmers thus expelled from their homes had no

[24] Mic. 2: 1–2.

[25] Mic. 2: 9; cp. Nowack, ad loc., in *H.K.A.T.*

[26] Mic. 2: 3–4.

[27] (1) cord, or measuring-line. (2) the area measured; 2 Sam. 8: 2; Josh. 17: 14; 19: 9; Deut. 32: 9. (a) the inheritance; 1 Chron. 16: 18; Ps. 78: 55; 105: 11.

[28] *goral*, Ar. *jaral*, (1) a stone. (2) a parcel of land assigned by lot. Judg. 1: 3; Josh. 17: 14; Num. 36: 3; Ps. 16: 5–6; 125: 3.

[29] Mic. 2:4b–5.

[30] *hushabtem.*

[31] Isa. 5: 8.

[32] Cp. Isa. 50: 1.

standing in the community save that of slaves or hirelings inasmuch as the rights of citizenship were indissolubly bound up with landownership.[33] Civil rights formerly enjoyed by both rich and poor alike regardless of the extent or relative value of their holdings came to be the sole prerogative of wealthy property owners constituting the upper stratum of Israelitish society. But the ill-gotten land shall be smitten with barrenness. 'Of a truth many houses shall be desolate, spacious ones and fair shall be uninhabited. For ten yokes of vineyard[34] shall yield one bath[35] and the seed of a homer[36] shall yield an ephah[37] and lambs shall graze upon the ruined places of Jerusalem as upon a pasture.'[38] Yahwe will enter into judgment with the elders[39] and its princes:[40] 'Ye have eaten up[41] the vineyard, the spoil of the poor is in your houses. What mean ye that ye crush my people and grind the face of the poor?'[42] The leaders of the people are bent on wringing the uttermost farthing from the poor. "Thy law-makers are law-breakers[43] and companions of thieves; every one loveth a bribe and pursueth rewards; to the orphans they do not jus-

[33] Buhl, *S.V.I.*, 45; Marti, *Jes.*, 55.

[34] צמד כרם, i. e., as much as a yoke of oxen can plough in a day.

[35] a liquid measure containing 7 gallons and 4 pints.

[36] a dry measure—32 pecks, 1 pint.

[37] The tenth part of a homer.

[38] Isa. 5: 9–10, 17a. כְּרָבִים = כְּמִדְבָּר, so Marti, op. cit., 57.

[39] *shayḫs.*

[40] civil and military officials.

[41] 'devastated.'

[42] Isa. 3: 14–15.

[43] lit., 'thy princes are rebellious.'

tice and the cause of the widow cometh not unto them.''[44] Laws are enacted by the magnates without due regard to the claims of equity and justice, thus facilitating the perpetration of grievous wrongs against those most in need of legal protection. ''Woe unto them that draw up mischievous ordinances and are continually writing oppression, to turn aside the needy[45] from justice and to take away the right from the poor of my people; that widows may be their prey and that they may rob the fatherless. What then will ye do in the day of visitation and in the desolation that cometh from afar?''[46] Jeremiah complains: 'Among my people are found wicked men . . . they set a trap,[47] they catch men.[48] As a cage[49] is full of birds, so are their houses full of deceit;[50] therefore they are become great and waxen rich. They do not administer justice, the cause of the fatherless and the right of the needy they do not judge. Should I not punish such things?''[51] Social unrighteousness in high places must cease, for thus saith the Lord: 'Execute ye justice and righteousness and deliver the spoiled[52] out of the hand of the oppressor, and do not oppress,

[44] Isa. 1: 23.

[45] *dallim*.

[46] Isa. 10: 1–3; cp. 29: 21.

[47] מִשְׁחִית; בַּשְּׁחַת (Duhm).

[48] LXX omits ישור כשך and reads מוקשים, instead of יקושים also לישחת (להשחית) for משחית: *ὅτι εὑρέθησαν ἐν τῷ μου ἀσεβεῖς καὶ παγίδας ἔστησαν τοῦ διαφθεῖραι ἄνδρας καὶ συνελαμβάνοσαν.*

[49] כְּלוּב, a wicker basket in which birds were kept.

[50] מִרְמָה, an abstract noun denoting riches gained by deceit.

[51] 5: 26–29a.

[52] נָזוּל, one deprived of his legal rights.

do no violence to the stranger, the fatherless, nor the widow, neither shed innocent blood in this place.'[53] But, nevertheless, the abuse continued. 'In thy midst[54] have they dealt deceitfully with the stranger, and vexed the fatherless and the widow.'[55] The example set by rapacious officials and hard-hearted moneyed magnates is even imitated by the rank and file of the common people. 'The people of the land[56] have dealt deceitfully and exercised robbery and have vexed the poor and needy, and they have oppressed the stranger without cause.'[57] Covetousness and the love of gain have led to an almost universal disregard of the simplest demands of religion and humanity. Social injustice is again the theme toward the close of the prophetic period. 'Render true decisions . . . and do not oppress the widow, nor the fatherless, the stranger, nor the poor; and let none of you devise evil against his brother.'[58] The book of Malachi bears testimony

[53] Jer. 22: 3; cp. 7: 5–7.

[54] 'Jerusalem.'

[55] Ezek. 22: 7b.

[56] According to Sulzberger the *'am ha-ares* was a federal assembly or representative body composed of the poorer classes. ''The Parliament of Israel had its humble beginnings at the city gate, where the elders of the town, 'comers of the gate,' sat to hold the Town Council and the Municipal Court. Gradually there was evolved, from this institution, the tribal *'Am*, which dealt with the larger matters of the district inhabited by the tribe. Friendliness among neighbors, and the necessity of defense against enemies, produced alliances between several tribes, and finally there resulted a union of all or nearly all the tribes of Israel. Then only could there have been formed a general gathering of delegates, an *'Am* of the land, our *'Am ha-ares.''* *Polity of Ancient Hebrews*, p. 3; cp. 58–59, 76, 79. Cp. Schürer, *Gesch. d. Jüd. Volkes*,[3] I, 400, n. 54.

[57] 22: 29.

[58] Zech. 7: 9a, 10.

to the long-continued prevalence of violence and fraud in spite of the old prophetic demand for righteousness between man and man. 'I will draw near you for judgment, and I will be a swift witness . . . against those who defraud the hireling, the widow and the fatherless and against those who abuse the stranger[59] and who do not fear me, saith Yahwe Sabaoth.'[60]

The social problem, as viewed by the prophets, resolves itself, for the most part, into a question of property in land. The appropriation of tribal and other lands by the king was regarded as one of the curses of the monarchy.[61] This explains Elijah's attitude toward King Ahab, alluded to in 1 Kings 21. It was quite clear to men like Hosea, Micah, and Isaiah that the concentration of land in the hands of a ruling class, if unchecked, would gradually result in the dispossession of numerous ancient clanships and families.[62] In their endeavor to protect the property rights of the latter, the prophets took up a hostile attitude toward *all* concentration of land in general.[63]

[59] 'client.'
[60] 3: 5.
[61] Cp. 1 Sam. 8: 14–15.
[62] Cp. Hos. 5: 10; Mic. 2:1–2; Isa. 3:14; 5: 8.
[63] Cp. Wallis, *Sociological Study of the Bible*, 154.

CHAPTER IX

POOR LAWS

Regard for the poor, in the mind of the prophets, is an essential part of religion. Sufficient has perhaps been said as to the underlying causes of social maladjustment in the period embraced by these powerful champions of the poor and distressed. The remedies proposed by the prophets were ignored. Notwithstanding the fact that their efforts in behalf of the poor and oppressed had no appreciable effect upon the prevailing social order, the principle remained. Resident aliens and others having little or no legal status are likewise commended by Hebrew legislators to the philanthropic regard of the more prosperous members of the community.

Maltreatment of strangers will be punished by the God of Israel since they are to be regarded as guests of the ultimate and supreme Lord of the land. 'A stranger[1] shalt thou not wrong, neither shalt thou oppress him. . If thou afflict him in any wise and he cry at all unto me, I will surely hear his cry.'[2] As toward the stranger, so toward the widow and fatherless, no harshness is to be shown. 'A widow or fatherless child ye shall not oppress.'[3] Yahwe's impartiality in meting out justice should be a further motive to obedience: 'For Yahwe your God is God of gods, and Lord of lords . . . who establisheth

[1] *ger*.
[2] Ex. 22: 21, 23; cp. 23: 9.
[3] 22: 21b.

the right of the fatherless and the widow and loveth the stranger. Love, then, the sojourner for ye were sojourners in the land of Egypt.'[4] The injunction not to oppress the sojourner is also repeated in Leviticus.[5] In fact, he is now placed on a footing of equality with the native Israelite. 'The sojourner[6] that sojourneth with you shall be unto you as one born among you[7] and thou shalt love him as thyself.'[8] No opportunity is lost by the priestly writer in emphasizing this principle: 'One law shall there be for the home-born[9] and for the stranger.'[10]

Early Babylonian law also makes provision for the protection of the less fortunate members of the community. Thus *Ḫammurabi* is called by *Anu* and *Bel* "to prevent the strong from oppressing the weak, . . . and to further the welfare of the people."[11] In the epilogue to his code of laws the great Babylonian legislator continues: "The great gods proclaimed me and I am the guardian governor, whose scepter is righteous and whose beneficent protection is spread over my city. In my bosom I carried the people of the land of Sumer and Akkad; under my protection I brought their brethren into security; in my wisdom I restrained

[4] Deut. 10: 17[a], 18–19.
[5] 19: 33.
[6] *ger*, 'resident alien.'
[7] *ezrah*.
[8] Lev. 19: 34[a].
[9] *ezrah*.
[10] Ex. 12: 49; Lev. 24: 22; Num. 9: 14; 15: 15, 16, 29.
[11] *C.Ḫ.*, Col. I, 37 f.

them; that the strong might not oppress the weak, and that they should give justice to the orphan and the widow. . . . Let any oppressed man, who has a cause, come before my image as king of righteousness! Let him read the inscription on my monument! Let him give heed to my weighty words! And may my monument enlighten him as to his cause and may he understand his case! May he set his heart at ease! (and he will exclaim): "*Ḫammurabi* indeed is a ruler who is like a real father to his people."[12]

The conquest of Babylonia by *Ḫammurabi* inferentially gave rise to class-distinctions, of which the *awilum,* the *mushkenum,* and the *wardum* are the leading types.[13] The *mushkenum,*[14] or poor man, may well have constituted the bulk of the subject-population. His status is clearly defined by special legislative enactments. For a successful operation on a *mushkenum,* the physician is to receive five sheqels, as against a fee of ten sheqels, if the patient be a member of the *awilum* class.[15] He pays less to his childless wife for a divorce than the *awilum,* the former paying twenty sheqels and the latter sixty sheqels.[16]

Further modifications of the law relating to the *mushkenum* are given in §§198, 201, 204, 211.[17]

[12] Ibid., Col. XL, 40 f.

[13] See above, p. 100, n. 83.

[14] Cp. *misken* (Koh. 4: 13; 9: 15 f.; Ben Sira 4: 3; 30: 14); Arabic *maskin,* Italian *meschino,* Portuguese *mesquinto,* French *mesquin.*

[15] §§215–216; cp. §§221–222.

[16] §§138–140.

[17] Johns, *A.J.S.L.,* v. XIX, 98.

The sojourner[18] of Israelite society finds a most striking parallel in the *jar*[19] of early Arabic literature. Under the old tribal system of Arabia, the stranger[20] was freely admitted to protection,[21] a powerful chief or some other influential man assuming the responsibility of protecting the person and property of his client. A salutary check is thus imposed upon the lawlessness of the desert, in which all aliens are regarded as enemies.

The one claiming protection or *jiwar* naturally belongs to the family of his protector or patron. Indeed, he is spoken of as the *jar al-bayti,* the '*jar* of the house.'[22] The house in which the protected stranger lodges is called *mujawir.*[23] The sense of solidarity was such, however, that the obligation of protection, once assumed by a member of the group, was equally binding upon every other member of the tribe.

As regards the rights and privileges of the *jar,* the following quotation from an old Arabic source will speak for itself. 'And the *jar* of the house and the man at the head of the tribe who calls (his comrades to battle) have equal rights.'[24] This virtually

[18] *ger.*

[19] Or the protected stranger (pl. *jiran*).

[20] "The permanent and hereditary dependents of a tribe other than slaves may be roughly classified as (a) freedmen, (b) refugees outlawed from their own tribe, (c) groups like the Jews at Medina who were compelled by their weakness to become *jiran* of the *Aws* and *Ḫazraj* (Agh. 19: 97)." *Kinship,* 51.

[21] The act of seeking such protection is expressed in Arabic by the verbal form *istijara,* or the tenth stem of *jara.*

[22] *Zuhayr* 1: 52.

[23] act. part. of the third stem of *jara;* Procksch, op. cit., 33, note 4.

[24] *Zuhayr* 1: 53: *wajaral-bayti walrajulu-lmunadi amama-lḥayyi 'aqduhuma sawa'u.* Procksch, 36, n. 1.

resolves itself into the principle of Israelite law that the home-born[25] and the stranger under the protection of the tribe are to enjoy equal rights.[26]

Where the relation between protector and protected was to assume a more permanent form, it was incumbent upon the latter to acknowledge in some degree the god of the land. In such a case the protected stranger becomes a client of the deity. "In Arabia proper," according to Robertson Smith, "where the relation of protector and protected had a great development, and whole clans were wont to attach themselves as dependents to a more powerful tribe, the conception of god and worshipper as patron and client[27] appears to have been specially predominant, not merely because dependent clans took up the religion of the patrons with whom they took refuge, but because of the frequent shiftings of the tribes."[28]

Believers are enjoined in the *Qur'an* to show kindness 'to the orphans,[29] and the poor,[30] and the neighbor[31] who is akin, and the *jar,* coming from afar, . . and to the son of the road.'[32]

Children deprived of their natural protectors shall be treated with special consideration by their guardians. 'Prove orphans until they reach a marriageable age, and if ye perceive in them right manage-

[25] *ezraḥ;* Arabic *ṣariḥ,* pl. *ṣoraḥa.*

[26] Lev. 19: 34[a]; Ex. 12: 49, etc.

[27] Among the Arabs of today the stranger is the guest of *Allah,* and *aziz,* as one dearly beloved. Doughty, I, 504.

[28] *Rel. Sem.,* 79.

[29] *yatama.*

[30] *masakin.*

[31] *jar.*

[32] Sur. 4: 40; cp. 4:9.

ment, then hand over to them their property, and do not devour it extravagantly in anticipation of their growing up. Let the rich (guardian) abstain (from using any of the property); the poor (guardian) on the other hand may devour in reason,[33] and when ye hand over to them their property, then take witnesses; but God sufficeth for taking account.'[34] Great care is to be exercised in the administration of orphans' property. The embezzlement of property held in trust constitutes one of the seven great sins of Islam.[35] 'Give unto the orphans their property, and give them not the vile in exchange for the good, and devour not their property with your own; verily, that were a great sin[36] . . . . And draw not nigh unto the wealth of the orphan, save with the best of intentions, until he reaches full age.[37] . . . Verily, those who devour the property of orphans unjustly, only devour into their bellies fire, and they shall broil in hellfire.'[38] The prophet no doubt deemed it necessary to champion the cause of the fatherless and the widows, owing to the brutal treatment accorded them by the Arabs, as the following will attest: "They will ask thee a decision about women; say, 'God decides for you about them, and that which is rehearsed to you in the Book; about orphan women to whom ye do not give what is prescribed for them, and whom ye are averse from marrying; and about weak chil-

[33] As a compensation for his services.
[34] Sur. 4: 5–7.
[35] R. Roberts, op. cit., 34.
[36] Sur. 4: 2.
[37] Sur. 6: 153.
[38] Sur. 4: 11.

dren; and that ye stand fairly by orphans;'—and what ye do of good, verily, that God knows.''[39]

The Deuteronomist, prompted by purely benevolent motives, provides that the gleanings of harvest time as well as sheaves which have been overlooked by the owner shall be left for the poor. ''When thou reapest thy harvest . . and hast forgot a sheaf in thy field, thou shalt not go again to bring it; it shall be for the resident alien, for the fatherless, and for the widow, that Yahwe thy God may bless thee in all the work of thy hands. When thou beatest thy olive-tree, thou shalt not go over the boughs again. . . When thou gatherest the grapes of thy vineyard, thou shalt not gather it after thee; it shall be for the resident alien, for the fatherless, and for the widow.''[40]

From the standpoint of the legislator the dependent members of the community have a right to share in the natural products up to a certain limit. ''When thou comest into thy neighbor's vineyard, thou mayest eat of grapes thy fill at thine own pleasure, but thou shalt not put any in thy vessel. When thou comest into thy neighbor's standing grain, thou mayest gather the heads with thy hand, but thou shalt not put a sickle to thy neighbor's standing grain.''[41] Any one passing through his neighbor's fields is at liberty to appease his hunger provided he refrain from unduly trenching upon the rights of private property.

[39] Sur. 4: 126.

[40] 24: 19–21. From Kent, *I.L.L.P.*, p. 128.

[41] Deut. 23: 25–26 (24–25). Cf. Kent, op. cit., p. 119.

Remedial measures of a more positive character are found as early as the book of the Covenant. Exodus 23: 10 f. prescribes that the cultivated land, the vineyards, and oliveyards should lie fallow every seventh year for the benefit of the humbler classes. 'Six years thou shalt sow thy land, and gather in the produce thereof; but the seventh year thou shalt let it lie fallow[42] and release[43] it[44] that the poor of thy people may eat, and what they leave the beasts[45] of the field may eat. In like manner thou shalt deal with thy vineyard and with thy oliveyard. Six days thou shalt do thy work, and on the seventh day thou shalt rest,[46] that thine ox and thine ass may have rest, and that the son of thy handmaid and the stranger[47] may be refreshed.'[48] Underlying this regulation is a philanthropic motive, the produce of the land being left to the poor in the seventh year. Whether or not the entire land was to lie fallow simultaneously is not explicitly stated. The legislator speaks of the fallow year as though it were still a variable limit depending upon the year in which the several fields were first cultivated.[49]

[42] שָׁמַט, 'to fling down;' cf. 2 K. 9: 33 (שִׁמְטוּהָ); 'let drop;' Ex. 23: 11 (תִּשְׁמְטֶנָּה) 'let the land drop' (leave it uncultivated). Jer. 17: 4; Deut. 15: 1, 2, 9; 31: 10.

[43] נָטַשׁ, to cast down, prostrate; Ezek. 31: 12; 32: 4; Num. 11: 31; to abandon, to surrender, Neh. 10: 32; cp. Isa. 21: 15; 33: 23.

[44] i. e., the produce.

[45] 'wild animals.'

[46] 'keep Sabbath.'

[47] 'resident alien.'

[48] Ex. 23: 10–12.

[49] Baentsch, *Ex.*, 206; Steuernagel, *Deut.*, 57. It is worth noting that the closely related law of Ex. 21: 2 f. evidently makes provision for the release of Hebrew slaves after six years of service, irrespective of the beginning of servitude.

Practical considerations scarcely permit of any other interpretation. The Israelite peasant soon learned from experience the wisdom of letting the ground rest. Furthermore, he so applied the regulations regarding fallow years by varying the period of fallow for the different fields that he could leave to the poor all the produce that grew of itself; while his own needs were met by the fields under cultivation.[50] In later times a plot of ground was divided into two or more portions, part of which was sown in the first year and the remainder in the year following. Or "the whole field was sown for a few years and then allowed to remain fallow for a length of time."[51]

An entirely different application is given to the above law in Deuteronomy,[52] where a fixed septennial 'year of release' is ordained for the relief of poor debtors. In the seventh year[53] "thou shalt make a release. And this is the nature of the release: every creditor shall remit[54] that which he hath lent to his neighbor; he shall not exact it of his neighbor or fellow countryman, because Yahwe's release hath been proclaimed. . . Whatsoever of

[50] Meinhold, *Sabbat und Woche im Alten Testament*, 22–23.

[51] So Mishna. Cf. Cook, *L.M.C.H.*, 196. The alternation of ploughing and fallow years was a matter of fundamental importance to the communal life of the Teutons. "The cultivated land of the Teutonic village community appears almost invariably to have been divided into three great fields. A rude rotation of crops was the object of this threefold division, and it was intended that each field should lie fallow once in three years." Maine, *Village-Communities in the East and West*, 79–80.

[52] Chap. 15: 1–11.

[53] מִקֵּץ שֶׁבַע־שָׁנִים. Cf. Dillmann, *Deut.* 306; Driver, *Deut.* 174.

[54] 'fling down, let drop.'

thine is with thy fellow countryman let thy hand release'' to the end that there be no poor among you.[55] Obedience to the commands of Yahwe will solve the social problem and promote the prosperity of the nation.[56] But experience proves that 'the poor shall never cease in the land.'[57] Under no circumstances shall a wealthy Israelite withhold a loan from his less prosperous brother. 'Take heed to thyself lest this base thought come in thy heart, The seventh year, the year of release, is at hand, and thine eye be evil against thy poor brother, and thou give him nothing. . Thou shalt willingly give unto him and thine heart shall not be sad[58] when thou givest to him because for this Yahwe thy God will bless thee in all thy works and in all thy undertakings.'[59] Liberality toward the poor and needy is enjoined as a duty.[60]

Various opinions are held as to the meaning of *shemitta,* a word which occurs only in Deuteronomy.[61] Some would take it in the sense of the suspension of a debt every seventh year.[62] Others interpret it to mean the actual remission of a loan by the creditor in the year of release.[63]

[55] 15: 1–2, 3b–4a. Cf. Kent, op. cit., p. 131. ''A foreigner thou mayest press for payment.'' (v. 3a.) The reason is that the foreigner (*nokri*) who visits Canaan for trade, etc., is governed by different laws and therefore under no such obligations as the native Israelite.

[56] 15: 4–6. Cf. Dillmann, op. cit., 308; Driver, op. cit., 176.

[57] 15: 11a; cp. Mk. 14: 7; John 12: 8.

[58] Lit., 'be evil.'

[59] 15: 9–10.

[60] 15: 11b.

[61] Deut. 15: 1, 2, 9; 31: 10.

[62] Dillmann, op. cit., 307; Driver, op. cit., 174.

[63] Wellhausen, *Hist.,* 117; Nowack, *H.A.,* I, 356; Benzinger, *H.A.,*[2] 293; Steuernagel, op. cit., 57; Gesenius, *H.W.B.* (1905); Harper, W. R., *Priestly Element,* 32; Mishna, *Shebi'it,* 10: 1.

The present law also implies an undeveloped state of Hebrew commerce and finance. Its observance would no doubt interfere with the growth of business. The cancelling of debts in the year of release, "regardless of the fact that the debtor might in the interim have recovered his property, would seem calculated to defeat itself; for upon such conditions it is difficult to understand how any would have been found ready to lend."[64] The entire question, of course, takes on a different aspect if the loans contemplated by the writer really come under the category of charitable deeds. Serious difficulties would only arise with the extension of this phase of Deuteronomic legislation to commercial loans. An instructive passage in this connection is Jer. 34: 8 f., already considered.[65] With the increasing complexity of commercial relations in post-exilic times the Deuteronomic regulation concerning the year of release was evaded. Recourse was had to numerous expedients designed to meet the needs of a commercial age.[66] One of these is the institution of the *prosbul,*[67] ascribed to Hillel, a celebrated rabbinical scholar and jurist of the first century B. C. The measure was introduced by Hillel, "when he saw that the people refused to loan to one another and

[64] Dri., op. cit., 179.

[65] See above, pp. 91 f.

[66] *Shebi'it,* 10: 2b; cp. 10: 8.

[67] פְּרוֹזְבּוֹל, פְּרוֹסְבּוֹל (an abbreviation of πρὸς βουλῇ βουλευτῶν), "a declaration made in court, before the execution of a loan, to the effect that the law of limitation by the entrance of the sabbatical year shall not apply to the loan to be transacted." Jastrow, *Talmudic Dictionary,* II, 1218. Compare the *dayn* and *salam wasalaf* of Muslim law, instituted for the purpose of evading the *Qur'anic* prohibition of usury. See above, p. 126.

thus violated what was written in the law,[68] to wit: Take heed to thyself lest a base thought arise in thy heart.''[69] In order to overcome this difficulty the creditor was allowed to make a formal declaration in court to the effect that the transaction to which he was a party should not be subject to the provisions of the Deuteronomic law. The formula to be used in such a case was to the following effect:—''I so and so deliver unto you the judges of such and such a place (the declaration) that I may at any time I choose demand the payment of all my outstanding debts.''[70] The document was then signed by a judge or other competent witnesses[71] in whose presence the declaration had been made.[72] The enactment was a salutary one in that it served as a protection to the creditor against the loss of his property and enabled the debtor to make a loan whenever he needed it.[73]

[68] Deut. 15: 9.

[69] *Shebi'it*, 10: 3.

[70] מוֹסֵר אֲנִי לָכֶם אִישׁ פְּלוֹנִי וּפְלוֹנִי הַדַּיָּנִים שֶׁבִּמָּקוֹם פְּלוֹנִי שֶׁכָּל חוֹב שֶׁיֵּשׁ לִי שֶׁאֶגְבֶּנּוּ כָּל זְמַן שֶׁאִרְצֶה.

[71] An oral agreement of a similar nature between two or more parties to a contract attested by witnesses could also be substituted for the written *prosbul*. Goldschmidt, *Bab. Talmud*, v. I, 278, n. 9.

[72] *Shebi'it*, 10: 4b.

[73] *Git.*, 37a.

CHAPTER X

SABBATICAL YEAR

It is worthy of observation that the year of release first acquires a religious significance in Deuteronomy. The *Shenat Shemiṭṭa* is proclaimed in honor of Yahwe.[1] Thus a preliminary stage is reached in the development of the sabbatical year of Leviticus in which the seventh year is to be 'a complete rest for the land, a rest for Yahwe'.[2] Agricultural pursuits are forbidden; only the spontaneous yield of the soil may be gathered on condition that the members of the community, including domestic and wild animals, receive an equal share. 'In the seventh year . . thou shalt neither sow thy field nor prune thy vineyard. The aftergrowth[3] of thy harvest thou shalt not reap, and the grapes of thy undressed[4] vine thou shalt not gather; it shall be a year of complete rest for the land. And the sabbath produce[5] of the land shall be for food for you; for thee, for thy male and female slave, for

[1] 15: 2.

[2] שׁבת ליהוה, which is apparently analogous to שׁמטה ליהוה of Deut., 15: 2. Cf. Lev., 25:4.

[3] ספיח, the produce of loose grains which had not been gathered by the farmer at the last harvest, Lev. 25: 11; 37: 30; 2 K. 19: 29.

[4] נָזִיר, 'separated,' from נזר, to separate, consecrate (Lev. 25: 5, 11, 'to prune a vine'). The consecrated one—(1) prince, Gen. 49: 26; Deut. 33: 16. (2) Nazarite, a person consecrated to God, Judg. 13: 5, 7; 16: 17; Am. 2: 11, 12, Num. 6: 2, 13, 18 f.

[5] produce of the sabbatical year.

thy hireling and for the settler,[6] who reside with thee, also for thy cattle and for the beasts that are in thy land shall all the produce be for food."[7] The needs of the people in the sabbatical year and the year following will be met by abundant harvests in the sixth year. 'And if ye shall say, What shall we eat in the seventh year, since we shall neither sow, nor gather in our produce? Then I will command my blessing upon you in the sixth year, and it shall bring forth produce for three years. And ye shall sow the eighth year and still eat of the old produce.'[8] It is taken for granted that the year begins in the spring,[9] and not in the fall,[10] as in the pre-exilic period. In view of the fact that both sower and reaper are to remain inactive during the seventh year, there can be no harvest in the eighth year. The harvest of the sixth year must suffice for the sixth, seventh, and eighth years. In the month Nisan of the ninth year a new harvest could

[6] תּוֹשָׁב, 'settler,' LXX: ἀλλογενής, Vulg. alienigena, cf. Bertholet, *S.I.J.F.*, 157 f.; Baentsch, *Ex.*, 107; Driver, *Ex.*, 103.

[7] Lev. 25: 4–7 [*H*].

[8] Lev. 25: 20–22a.

[9] i. e., in Abib, 'ripening ears' (of barley, Lev. 2: 14; Ex. 9: 31); also called 'the month of ripening ears' (Ex. 13: 4; 23: 15; 34: 18; Deut. 16: 1). This term is later supplanted by Nisan (April) in consequence of the Babylonian exile, and it was about this time that the Jewish calendar had to undergo a radical change. Babylonian names are substituted for the months of the Hebrew calendar and the beginning of the year from now on coincides with that of the Babylonian calendar. Cf. Benz. *H.A.*,[2] 168–170; Baentsch, op. cit., p. 92.

[10] Before the exile the year is reckoned from the 'wheat harvest' (Ex. 34: 22) and the vintage feast (Isa. 32: 10), or from the fall of the year.

be reaped. If the year began in the spring,[11] it would be futile to expect a harvest before the beginning of the next year, owing to climatic conditions.[12]

That the sabbatical year was not observed before the captivity is attested by Lev. 26: 34 f.[13] Now that the people are in exile shall the land repay a debt of long standing to Yahwe.[14] 'Then shall the land have its sabbaths[15] restored, as long as it lieth desolate, and ye be in your enemies' land, then shall the land rest and repay its sabbaths (to Yahwe).' The guilty nation shall not return until the debt is paid.[16]

In the law of Exodus 23: 10 f., as already intimated, the seventh year is not called a sabbath. It merely provides for a year's fallow every seventh year. There is no indication that the entire land was to be subject to a common septennial fallow, as in the case of Leviticus 25: 2 f. It is obvious that the spontaneous produce of the sabbatical year would hardly insure the possibility of a most precarious existence in the face of peculiar climatic conditions occasionally productive of famines. Moreover, it will be remembered, that the grazing husbandry of an earlier period played but a subsidiary part in later Israelitish economy. An agri-

[11] About April.

[12] The land is ploughed and sown after the early rains of October and November. Equally indispensable for the growing crops are the late rains of April and May by reason of the extreme heat of early summer.

[13] v. 43 [*E*].

[14] Cf. Baentsch, *Lev.* 423, 435; Gesenius, *H.W.B.* (1905), p. 705.

[15] 'seasons of rest.'

[16] 2 Chron. 36: 21.

cultural community cannot well afford to lose the products of the soil every seventh year. And finally, trade and commerce on a large scale were still a thing of the future. Thus, in the days of Nehemiah conditions were more favorable for its observance.[17] But to judge from the distress occasioned by the observance of a common septennial fallow year in the Greek period,[18] Nehemiah's efforts in this direction could scarcely have met with anything like success.

[17] Neh. 10: 32. Cf. Siegfried, *Neh.*, in *H.K.A.T.*, 114; Bertholet, *Neh.*, in *K.H.K.A.T.*, 78.

[18] 1 Macc. 6: 49, 53; Josephus, *Ant.*, XIV, 16: 2; XV, 1, 2.

CHAPTER XI

THE YEAR OF JUBILEE

Analogous to the sabbatical year, the proclamation of the year of jubilee marks the beginning of another fallow year.[1] At the end of seven seven-year periods the trumpet of jubilee is to be sounded on the tenth day of the month Tishri, and all transactions in landed property for the fifty years previous shall be revoked. 'Thou shalt count seven sabbaths of years, seven times seven years; and there shall be the equivalent[2] of seven sabbaths of years, that is, forty nine years. Then thou shalt sound[3] a loud horn on the tenth day of the seventh month. . . And ye shall sanctify[4] the fiftieth year,[5] and proclaim a release[6] throughout the land to all its inhabitants; it shall be a jubilee[7] for you, and every one shall return to his (landed) possession[8] and . . . to his clan.'[9] One of the principal concerns of the author is with the restoration of heredi-

[1] Lev. 25: 11–12.

[2] lit., days.

[3] to cause to pass through (the land).

[4] set apart as sacred.

[5] lit., the year of the fifty years.

[6] *deror*. Isa. 61:1; Jer. 34: 8, 15, 17; Ezek. 46: 17. See pages 91 f., 98, 175 f., 204.

[7] *yobel* (LXX: ἄφεσις, release, remission of a debt), an abbreviation of *qeren hayyobel*, ram's horn (Josh. 6: 5; cp. 6: 4), an ancient instrument. *Shenat hayyobel*, the year that is inaugurated by the blowing of the ram's horn. Cp. Doughty, op. cit., I, 366.

[8] *aḥuzza*.

[9] Lev. 25: 8, 9ª, 10. On *mishpaḥa*, see below, pp. 178–179.

tary property to its original owners. The 'family' domain is too sacred a possession to be the object of sordid speculation. 'But if thou sell anything (land) to thy neighbor or buy anything of thy neighbor, ye shall not defraud each other. According to the number of the years after the (last) jubilee thou shalt buy (land) from thy neighbor, and according to the number of the crops[10] (until the next jubilee) shall he sell to thee.'[11] The price of the land in either case is determined by the number of harvests to be reaped between the date of alienation and the next jubilee. Carried to its logical conclusion, it is no longer the land that is being sold but the produce of the soil. In other words, the individual holder merely becomes a lessee for all or part of fifty years on which security he could borrow an amount proportionate to the prospective earning capacity of his property. Manifestly, then, there can be no such thing in future as the absolute ownership of private property which may be disposed of at will. The possessions of a family or clan are not to be permanently alienated from its hereditary owners. "The land shall not be sold in perpetuity;[12] for the land is mine, and ye are resident aliens[13] and settlers with me.'"[14] The 'family,' in the last analysis, is merely

[10] years of produce.

[11] Lev. 25: 14–15.

[12] Lit., for destruction, for ever, completely.

[13] For the combination: 'sojourner and settler,' cp. Gen. 23: 4; Num. 35: 15; fig., Ps. 39: 12; 1 Chron. 29: 5. Israelites referred to as sojourners in Egypt: Ex. 22: 21; 23: 9; Deut. 10: 19; Lev. 19: 34, who inherited Canaan: Ex. 23: 30; 32: 13, the land which Yahwe gave them as an inheritance, Deut. 4: 21, 38; 15: 4, etc.

[14] Lev. 25: 23. Cf. Kent, op. cit., p. 132.

God's tenant. Land belonging to Yahwe cannot be sold in perpetuity, that is to say, without the right of re-purchase by the original holder. This principle applies not only to families, but also to clans and tribes.[15]

It is maintained that the theory of land tenure, as expressed in Lev. 25:23, is an adaptation to the thought of later Judaism. In his work on the *Religion of the Semites,*[16] Robertson Smith remarks: "The idea that the Israelites are Yahwe's clients, sojourning in a land where they have no rights of their own, but are absolutely dependent on his bounty, is one of the most characteristic notes of the new and more timid type of piety that distinguishes post-exilic Judaism from the religion of old Israel." However this may be, it is safe to say that the idea expressed in Lev. 25:23[a] undoubtedly goes back to a much earlier period. That the soil belongs to the deity is a common Semitic belief. Thus, among the ancient Babylonians, *Ellil,*[17] the chief god of Nippur, is called *bel matati,* 'lord of the lands,' literally, 'owner of the lands.'[18] With the conquest of Babylonia by *Ḫammurabi, Marduk,* the patron deity of the city of Babylon, becomes a successful rival to his distinguished predecessor. In the religious literature of the First Dynasty *Bel* confers upon *Marduk* the right of assuming the title of *bel matati,* 'lord of the lands.' The same epithet occurs, for

[15] Baentsch, *Lev.,* 424.

[16] Page 78; Baentsch, op. cit., 424.

[17] 'the sublime lord who determines the fate of the gods.' Hinke, *A New Boundary Stone of Nebuchadrezzar* I, 53.

[18] See above, p. 16. A similar title (*belit matati*) is ascribed to *Ishtar,* the mother of the great gods and the consort of *Bel.*

example, in an old incantation tablet, known as the incantation of *Eridu:*—

'Great king, lord of the lands,[19]
Firstborn son of *Ea,* who is powerful in heaven and upon earth,
Marduk, great lord of men, and king of the lands, god of gods,
Prince of heaven and earth, who hath not his equal,
Darling[20] of *Anu* and of *Bel,*
Heaven and earth are thine.'[21]

As in Babylonia, so in the land of Canaan, the soil belongs to the local *ba'alim.*[22] Having dispossessed the *ba'alim* of their territory, Yahwe, like *Marduk,* absorbs some of the functions and attributes of the Canaanitish gods of vegetation and fertility. Yahwe, indeed, is merged into a *Ba'al,* as evidenced by such proper names as *Yoba'al,* 'Yahwe is *Ba'al,*'[23] *Ba'alyah, 'Ba'al* is Yahwe,'[24] and others.[25] All

[19] *be-el ma-ta-a-ti.* In another inscription *Marduk* is called 'the lord (owner) of this field:' *bel eqli shu'atum.* Hinke, op. cit., 54.

[20] *tap-pu-u,* 'companion,' so Hehn, *B.A.,* V, 334.

[21] IV, R.,[2] 29, no. 1, lines 9–20, 21–32. Jastrow, *R.B.A.,* I, 501–502; Rogers, *R.B.A.,* 175.

[22] Compare the *Ba'al* of Sidon, the *Ba'al* of Lebanon, the *Ba'al* of Tarsus, the *Ba'al* of heaven, etc., of the Phoenician inscriptions. Wellhausen (*R.A.H.,* 170) calls attention to the *Ba'al* lands of Arabia which require neither rain nor artificial irrigation, the underground water supply being sufficient to yield fruit (chiefly dates) of the best quality. On page 104 of the same work, the author observes that originally the ownership of the land was vested in the deity, and not in the individual.

[23] This is the Septuagint's translation for *'ebed.* Bertholet, *S.I.J.F.,* 70.

[24] 1 Chron. 12: 5.

[25] Gesenius, *H.W.B.* (1905), 96.

lands, then, held by the conquering Israelites are Yahwe's property, or to use the expression of Leviticus, 'the land is mine.'[26]

No doubt the social problem was generally regarded as a direct outcome of the institution of private landownership. And what would be more likely to check its evil effects than a revival of the *ge'ulla*,[27] the practical workings of which were known to every intelligent Israelite. Hereditary lands must be kept intact as a matter of duty toward one's ancestors,[28] as well as for the sake of retaining one's rights of citizenship.[29] Ancestral possessions once alienated must be redeemed. "In all the land of your possession ye shall grant a redemption for the land."[30] In accordance with ancient usage this right devolves upon the nearest kinsman.[31] The price of redemption must be in proportion to the value of the unexpired lease. "And if a man have no one to redeem it, and he become rich and find sufficient (means) to redeem it, then let him count the years since its sale and refund the value of the remainder[32] [until the year of jubilee] to the man to whom he sold it; thus he may return to his possession."[33] In default of the requisite amount the

[26] 25: 23.

[27] See above, pp. 66 f.

[28] 1 K. 21.

[29] Isa. 5: 8.

[30] 25: 24.

[31] 25: 25. Jer. 32: 8 f.; Ru. 2: 20; 3: 4 (*ga'al*, to assert or vindicate a claim or right which has lapsed).

[32] Only in *P.;* cf. Ex. 16: 18, 23; 26: 12–13; Num. 3: 46, 48–49.

[33] 25: 26–27. Cf. Kent, op. cit., p. 71.

landed property remains in the hands of the creditor until the year of jubilee.[34]

What the legislator appears to have had in mind was a periodical redistribution of small holdings for the special benefit of the masses who had sold their patrimony under the pressure of necessity. But theory rarely coincides with practice. The question soon presented itself: would it be possible to enforce such a law without unduly trenching upon the rights of the upper classes residing in the fortified cities? Would it be fair to deprive them of their possessions without offering some compensation in return? The endeavor to adjust the lawgiver's ideal to actual conditions resulted in a compromise. A distinction is drawn between city property and farm lands. The period of redemption for real estate in the walled cities is limited to one year. "If a man sell a dwelling house in a walled city, he shall have the right of redemption for a whole year after it has been sold; . . and if it be not redeemed within a year,[35] the house that is in the walled city shall be assured in perpetuity to him who bought it, to him and to his descendants; it shall not be released in the jubilee."[36] The conception of personal ownership would naturally be more fully developed in prominent trading centres than in the rural districts,

[34] It is worthy of observation that the greater portion of the tribeland of ancient Ireland was subject to *Gabhailcine*, or redistribution after a fixed period of years. In early times the redistribution of such lands affected every free member of the tribal group. Later, however, it was confined to the land of a *finè*. Compare also the Aryan mode of tenure known as the shifting severalty.

[35] 'till the completion of a full year.'

[36] 25: 29–30. Cf Driver, *Lev.*, in *S.B.O.T.*, p. 49.

and hence the differentiation between the two. Unwalled villages are identified with the open country because of the close proximity of farm houses to the adjoining fields.[37] Farm property is redeemable at any time. "But the houses of the villages which have no wall around them, shall be reckoned as belonging to the fields of the country; the right of redemption shall be retained for them, and they shall be released in the jubilee."[38] Similar privileges are extended to the Levites. As regards 'the houses in the cities which belong to the Levites, the Levites shall have a perpetual right of redemption. And if one of the Levites do not[39] redeem it, the house that was sold in the city of their possession shall be released in the jubilee. . . But the fields in the *migrash* of their cities may not be sold, for it is their perpetual possession.'[40]

The *migrash* of our passage is known to have been used as pasturage for the cattle. 'And they (the Levites) shall have the cities to dwell in; and their pasture lands shall be for their beasts of burden, and for their herds,[41] and for all their (other) animals.'[42] The equation of the term with pasture land is based on what may have been its original meaning. It is apparently derived from a verbal root meaning 'to drive away.' The *migrash,* then,

[37] Cp. Song of Sol., 7: 11.

[38] 25: 31. Driver, loc. cit.

[39] So Vulgate.

[40] 25: 32–34.

[41] Lit., possessions.

[42] Num. 35: 3. For the dimensions of the *migrash,* see Num. 35: 4–5; Ezek. 45: 2; 48: 17.

would be the place to which the cattle is driven[43] by the herdsman. In many passages, however, the word refers to communal lands in the vicinity of towns, in which the several communities have common rights.[44] On account of this technical usage, the exact meaning of the term in Lev. 25:34 is a debatable matter. Following the suggestion given in Num. 35:3, Driver[45] adopts the primary sense and translates: "But fields in the pasture land of their cities may not be sold; for that is their perpetual possession." Baentsch omits the term *šade* and reads: 'But the pasture land belonging to their cities may not be sold at all,' etc. Retaining the word *šade* and adopting the secondary or technical meaning of *migrash* we get: But fields belonging to the common land of their cities may not be sold; for that is their perpetual possession. Josh. 21:11 f. draws a distinction between the *migrash* and *šade* without defining the nature of either one. 'And they gave them (the Levites) . . Hebron, . . . and the *migrash* thereof round about it. But the fields of the city and villages thereof they gave to Caleb . . . for his possession.'[46] According to Fenton the *migrash* corresponds to the arable *mark* of a German community, which lay immediately round a town. If adapted for the purposes of cultivation, this tract was divided among the body of communists. Being less adapted to cultivation, the

[43] Compare German *Trift*.

[44] Ezek. 48:15, 17; 1 Chron. 6:40 f. (55 f.).

[45] Ad loc.

[46] 1 Chron. 6:40 f. (55 f.).

śade,[47] on the other hand, constituted the pasture-*mark* or more distant land left in undivided commonalty.[48]

The other two passages in which the jubilee is mentioned are Lev. 27:14–16 and Num. 36:4. According to the former, houses consecrated to Yahwe on the basis of a vow[49] may be redeemed by adding one-fifth[50] to the valuation placed upon them by the priest. Lands vowed to the Deity are subject to the regulations of the year of jubilee in Lev. 25:8 f. In estimating the value of a field thus consecrated each homer of barley sown upon it shall be reckoned at a sheqel of silver per annum or a total of fifty sheqels, provided the date of appraisal coincides with the year of jubilee. "If a man consecrate to Yahwe part of the field of his possession, thy valuation shall be in proportion to the seed sown upon it . . . if sown with a homer of barley it

[47] Compare Assyrian *shadu,* mountain. Cf. Judg. 5:18; Num. 23:14; Deut. 32:13; Isa. 56:9; Jer. 17:3; 18:14; Ezek. 21:2; Ps. 50:11; 80:14; 96:12. The following expressions postulate a similar environment: *ḥayyat haśśade,* wild beasts (beasts of the field—Gen. 2:20; 3:1, 14; Hos. 2:20; Job 5:23; 39:15; 40:20; Ezek. 38:20), *gepen śade,* wild vine (vine of the field—2 K. 4:39), *ish śade,* hunter (a man of the field—Gen. 25:27), etc. That the word *śade* was also used of cultivated soil is well attested: Gen. 37:7; 47:24; Ex. 23:16; Lev. 19:19; Deut. 24:19; Mic. 3:12; Ruth 2:3, 9; Ezek. 17:5 (*śede zera'*, seedfield; cp. Ass. *zeru eqlu;* cp. Acel-dama, the field of blood).

[48] *Early Hebrew Life,* 38–39.

[49] "The vow was of the nature of a contract between the individual and Yahwe and was all the more binding because the Deity was one of the parties to it." Kent, *I.L.L.P.,* in *Student's O. T.,* 234.

[50] i. e., 20%, the usual rate of interest in the Neo-Babylonian period.

[shall be valued] at fifty sheqels of silver. . . But if he consecrate his field after the jubilee, the priest shall reckon to him the money in proportion to the years that remain until the year of jubilee.''[51] After paying the valuation, the owner merely has the usufruct of the field in question unless he redeem it by adding the usual fifth required for redemption. ''And if he who consecrated the field wish to redeem it, then he shall add the fifth part of the money of thy valuation to it, and it shall be assured to him. But if he will not redeem the field, or if he have sold the field to another man, it shall not be redeemed any more; but the field, when it is released in the jubilee, shall be holy to Yahwe as a field devoted; it shall be the possession of the priest.''[52] As regards a field acquired by purchase the money of the valuation must be paid immediately in order to facilitate its redemption by the original owner. 'And if a man consecrate to Yahwe a field which he hath bought, . . . the priest shall reckon to him the amount of thy valuation until the year of jubilee; and he shall give thy valuation in that day, as a thing holy to Yahwe. In the year of jubilee the field shall revert to him of whom it was bought, and to whom the possession of the land belongeth. And all thy valuations shall be according to the sheqel of the sanctuary;[53] twenty gerahs shall be the sheqel.'[54]

[51] Lev. 27: 16, 18. Cf. Kent, op. cit., p. 236.

[52] 27: 19–21. Kent, p. 237.

[53] i. e., full weight; cf. Baentsch, *Ex.*, 261; Benz., *H.A.*,[2] 196 f.

[54] 27: 22–25. Cp. Driver, ad loc.

The passage in Num. 36:4, discussed in a previous chapter,[55] throws no additional light on the law of Lev. 25:8 f.

Wellhausen and others hold that the institution of the jubilee is the product of a post-exilic school. The provisions of Lev. 25:8 f. are regarded as an elaboration of the regulations concerning the sabbatical year. The fiftieth year itself, it is argued, rests on nothing more than an artificial expansion of the sabbatical idea. Driver, on the contrary, says that "whatever obscurities surround the origin and early form of jubilee, it can hardly have been a mere paper law. The writer of the chapter has a very definite law in his mind. To suppose that a priestly writer invented the whole of the law of the jubilee and the fiftieth year, as a development of the seventh year and a completion of the sabbatical idea, is surely a highly artificial hypothesis."[56]

It will be noticed that in Ezekiel 46:16–18 provision is made for the reversion of all crown lands to 'the prince' in the year of release,[57] since the officials to whom they had been presented were not members of the royal family. To assume that we have here an allusion to the sabbatical year,[58] would be a most arbitrary procedure. As a matter of fact nothing is known of a seventh year, in which hereditary lands were restored to their original owners. Deuteronomy 15:1–6 merely stipulates that the

[55] See above, p. 33.

[56] *Lev.*, 98.

[57] *deror;* cp. Ass. *duraru*, freedom, independence. Del., *H.W.B.*, 229.

[58] So Kraetzschmar, *Ezek.*, 291.

rights of a lender are to be held in abeyance during the year of release.[59] That this should preclude the possibility of exacting repayment in the following year cannot be inferred from the text. Even granting the possibility of an actual remission of loans in the year of release, it will be apparent at once, that the reversion of crown lands to the original donor has little in common with the stipulations of Deuteronomy 15. Attention is also called to Jeremiah 34: 8 f.[60] The provisions of Ex. 21: 2–6 and Deut. 15: 12–18 readily suggest themselves as points of comparison.[61] But the law of Ex. 21 and Deut. 15 is nevertheless quite distinct from the passage in Jeremiah. The manumission of Hebrew slaves, contemplated in the latter, must be simultaneous and without regard to the period of servitude; in the former such liberation is conditioned on six full years of service. It is evidently an extraordinary measure hastily consented to under great pressure. Pointing in the same direction is the Hebrew term: 'to proclaim a release.'[62]

In view of these considerations we are justified in assuming that the year of release, spoken of in Ezek. 46: 16–18, refers to the fiftieth year, and not to the law of the sabbatical year. That landed estate granted by the prince to his courtiers should be subject to reversion is in complete harmony with the regulations of Lev. 25: 8 f.

[59] *shemitta.*

[60] See above, pp. 91 f.

[61] Jer. 34: 14.

[62] *liqro deror.* Cornill, *Jer.*, 379.

It is true that the prophets of pre-exilic times make no mention of the jubilee. We should expect some reference to it in connection with the bitter complaints of Isaiah and Micah against the alienation of hereditary estates by the rich.[63] The prophets, however, seldom refer to the *Tora,* even when inveighing against ceremonial and moral wrongs.[64] As the argument from silence is never conclusive, it does not follow, that the jubilee was not included in the law of Yahwe, simply because the prophets do not allude to it. Hosea, for instance, complains that the *Torot* of Yahwe were being despised by the people of Israel.[65] Again, in the days of Jeremiah[66] the law concerning the manumission of slaves was not observed, and yet the law existed. Similarly, the institution of the jubilee may have been known to Isaiah in spite of its non-observance by the more prosperous members of Israelite society.

There is a strong presumption that the more essential features of the jubilee go back to very ancient times. The redemption of hereditary estates, which constitutes an integral part of the institution, is clearly based on the ancient custom of the *ge'ulla.*[67] Moreover, an old tradition informs us that the land of Canaan was apportioned to the several tribes by lot, each allotment being determined by the size of the tribe. 'Among these

[63] Isa. 5: 8 f., Mic. 2.

[64] Eerdmans, *Lev.,* 127, in *Alttest. Stud.,* v. IV.

[65] 8: 12.

[66] See above, pp. 91 f.

[67] Cf. pp. 66 f.; cp. Buhl, in the *American Journal of Theology,* I (1897), 733 f.

(tribes) the land shall be apportioned as an inheritance according to the number of names. To the large tribe thou shalt give a proportionately large inheritance, and to the smaller tribe thou shalt give a proportionately small inheritance: to each one shall its inheritance be given according to (the number of) those who were numbered[68] of each tribe. Notwithstanding the land shall be divided by lot: according to the names of their paternal tribes shall they inherit. According to the lot shall their inheritance be divided between the more numerous and the less numerous tribes.'[69] From Num. 33:54 we learn that the principle of apportionment laid down in the above instructions also held good in the case of the smaller tribal units. 'And ye shall enter into possession of the land by lot according to your clans;[70] to the larger clan ye shall give a proportionately large inheritance, and to the small clan ye shall give a proportionately small inheritance: whithersoever the lot falleth to any clan, it shall have its possession; according to your paternal tribes ye shall enter into possession.' Numerous passages might be cited to show that the clan occupies an intermediate position between the tribe and the household, or family.[71] But since 'the (father's) house,' or family, is equated with the

[68] male individuals. Cp. Num. 1:2.

[69] Num. 26:53–56; cp. Josh. 13–21.

[70] or 'families.'

[71] The series in Josh. 7:14 f. is: tribe—clan—household—individuals; compare also 1 Sam. 10:19–21; Num. 1:2. Obviously, each tribe comprises a number of clans, the latter being made up of smaller units, called households, and from these households come sons representing individuals.

clan[72] and the tribe[73] alike, a connecting link is established between the family and the tribe. It is important to notice that the rules governing the distribution of land entirely overlook the individual. They are chiefly concerned with the tribal group, the clanship, and the household.

The allotments of the larger groups having been determined in the manner described, the distribution of these portions among the smaller social group consisting of various related families under a patriarchal head would be a natural sequel. The size of each family allotment again depended on the numerical strength of the agnatic group. With the passage of semi-nomadism to agriculture such groups would gradually expand into small village communities holding a kind of communism in land similar to that of the Palestinian village communities of to-day. As time went on the tribe lost much of its former importance and the family group alone is on the ascendant. And this is what we might expect to find in village communities. Gradually, however, the institution of private ownership begins to play havoc with the 'family.' And now the jubilee sets in with its protective measures. The point of emphasis is shifted from the tribe to the family group. The jubilee seems to be the outgrowth of a system of 'family' communism. Family rights must be carefully guarded in order to prevent the disintegration of the family domain, as illustrated by the story of Naboth's vineyard.[74] For

[72] Num. 3: 24, 30, 35 f.; 1 Chron. 24: 6. The clan might even designate the Hebrew nation. Am. 3: 1.

[73] Num. 17: 17; Josh. 22: 14; cf. Steuernagel, ad loc.

[74] See above, pp. 43 f.

further corroborative evidence we might turn to Jer. 37:12, where the prophet is on the point of going to Anathoth for the purpose of participating in the division of certain lands belonging to the agnatic group of which he is a member.[75] The Deuteronomic injunction against the removal of the neighbor's landmark[76] probably relates to land held in common, and not to boundaries of a more permanent character.[77] And finally it is not unlikely that the fallow of the fiftieth year is a survival of the ancient communal right of ownership.

The jubilee, then, represents a compromise between the communism of more primitive times

[75] Buhl, *S.V.I.*, 58; cp. Mic. 2:5.

[76] 19:14; 27:17; Hos. 5:10; Prov. 22:28; 23:10; Job 24:2. It appears that the precarious character of the landmarks occasioned numerous wrangles and quarrels. Homer, for example, speaks of men wrangling "over boundaries in a common field, striving for their right within scanty space." (*Iliad* XII, 421 f.) Many centuries later an English writer complains of "a practice too common in common fields, where men make nothing to pull up their neighbor's landmark, to plow up their land and mow their grass that lieth next them." We hear of "constant strife and contentions in the common fields for want of a mound to keep cattle within their own bounds . . . How many brawling contentions are brought before the Judges of Assize by the inhabitants of the common fields." (Lee, *Regulated Inclosure*—A. D. 1656.)

[77] i. e., such as trees and the digging of holes wherein egg-shells and charcoal were placed as evidence in case of dispute. Cook, op. cit., 195. The laws of Manu furnish a striking parallel: "When boundaries first are established let strong trees be planted on them, . . or clustering shrubs, . . so that the landmark may not easily perish . . . Large pieces of stone, . . ashes, potsherds, . . and substances of all sorts, which the earth corrodes not even in a long time should be placed in jars not appearing above ground on the common boundary." Haughton, *Institutes of Manu*, II, chap. VIII, 246–247, 250–251.

and the institution of private landownership.[78] But the ever widening stream of commercialism could not be checked by legislative enactments, notwithstanding the added weight and dignity accorded them by the religion of Israel. The social problem doubtless continued as before. According to the unanimous testimony of the Rabbis the jubilee-years were reckoned but not observed.[79] The communism of the Jerusalem church[80] soon perished when brought into contact with a commercial atmosphere.

Passing to Babylonia, we find that while the Hebrew jubilee has no parallel in Babylonian jurisprudence, one of the main features of the institution makes its appearance at an early date. Reference has already been made to the right of redemption.[81] It will suffice to say that ancestral property, be it land or houses, must eventually be restored to the legal descendants of the original owners, unless otherwise stipulated in the contract.[82] The paternal estate is not to be alienated from the family.[83]

Then, too, a kind of communism is met with in a periodical distribution of land by a town council.[84] As regards the method of distribution, we are left

[78] Eerdmans, op. cit., 126.

[79] Nowack, *H.A.*, I, 352; Benz., *H.A.*,[2] 136; Kent, op. cit., 132.

[80] Acts 2: 44; 4: 32.

[81] See above, p. 79.

[82] Cf. pp. 79 f. Cp. Edouard Cuq, *La propriété foncière en Chaldée d'après les pierres-limites du Musée du Louvre,* in *Nouvelle Revue Historique de Droit,* 30 (1906), 724.

[83] See above, pp. 46 f.

[84] Boscawen, *Trans. Vict. Inst.,* 24, p. 185.

to conjecture that it was probably quite similar to that in force among the Hebrews, each parcel being determined by lot. Edouard Cuq, in following up Scheil's equation of *bitu* with 'tribe,' endeavors to prove the existence of tribal lands in the Cassite period.[85] According to a number of boundary stones in the Louvre dating from the third Cassite dynasty[86] the tribe occupies the district over which it has jurisdiction. This district is divided into several smaller districts with a view to meet the needs of the various tribal subdivisions. The lands of such a smaller group are likewise parcelled out among a certain number of tribesmen, who are thenceforth regarded as the proprietors of the field. Some of the members of the tribe are found living in towns and villages within the confines of the tribal territory. Boscawen even believes to have discovered a distinct trace of the ancient village community. To quote: "A number of villages paid their (temple[87]) tithe in a body and were taxed as if they paid individually."[88] Whatever may be the merits of this statement, it is plain from the common lands of the *kudurru*[89] inscriptions, that communism in

[85] Op. cit., 722 f. Cp. Hinke, op. cit., 16.

[86] B. C. 1284–1117.

[87] That the taxes paid to the temple at Nippur were considerable is well attested by the *Documents from the Temple Archives of Nippur* (Cassite period). Cf. Luckenbill, *A.J.S.L.*, XXIII (1906–07), 294 f. Among other things, Nebuchadrezzar is elevated to the throne of Babylonia for the purpose of regulating the tithes of Ekur and Nippur. Neb., Nippur, Col. II, 3; cp. Col. II, 8 f.

[88] Op. cit., 185.

[89] 'boundary stone.' An older designation for *kudurru* is *gar-du*, 'the boundary' having formerly been expressed in terms of *gar-du*. One *gar* is equal to twelve cubits (*U*) or two 'reeds' (*Gi.* = *Qanu* =

some form or other must have been known to the ancient Babylonians. In the land grants of the Babylonian kings frequent mention is made of the *ugaru* or communal land of towns and districts.[90] The land granted by Nebuchadrezzar I[91] to *Nusku-ibni* was of this type:—

"XXII (*gur*) 170 (*qa*) of seedfield, arable land,[92]
which had been exposed to flooding,
a field of the town[93] of *Mar-Aḫattua,*
on the bank of the Tigris, in the district of *Bit-Sin-sheme,*
where since ancient days no ditch had been dug,
no vegetation had grown up and which had not been brought under cultivation, but had been exposed to the inroads of the water,—namely
IV *ush,* upper length, west, adjoining
Bit-Ṣir-appili and the district of *Bit-Sin-sheme*
III *ush,* LV *gar,* lower length, east,
adjoining *Bit-Suḫur-Gal-du,*
II *ush,* X *gar,* upper width, north, adjoining
Bit-Ushbula,
I *ush,* lower width, south, on the bank of the Tigris,
in all XXII (*gur*) 168⅔ (*qa*) 5 (*gin*) of seedfield,
$\frac{1}{18}$ *gan*
(reckoned) at 30 *qa* of seed,

Heb. *qane*). *Z.A.* XXIII (1909), 112; De Genouillac, *Tablettes Sumériennes Archaiques,* p. LXVII.

[90] Hinke, op. cit., 16 f.; 247. Cuq, op. cit., 735.

[91] 1140 B. C.

[92] *qirubu;* cp. Aramaic כרובא 'an area that can be ploughed in a day,' from כרב, 'to plow.'

[93] *ugar ali,* 'the (communal) land belonging to a city,' Meissner, *B.A.P.,* 123.

(equivalent to) a large cubit,[94]
a field of the town of *Mar-Aḫattua,* in the district of *Bit-Sin-sheme,*
Ban-shum-iddina, the governor of *Bit-Sin-sheme,*
measured and to *Nusku-ibni,*
the magistrate of Nippur,—(Nebuchadrezzar) forever granted. The surveyors of this field were *Nabu-zer-lishir,* and *Nabunna.*
(Whoever) overthrows the grant
of this field and in order to secure the use of the pasture land sends some one and
with evil intent causes (its) seizure,
(or) says that [the field has not been measured] . . .
(may) *Nin-ib,* the lord of confines and boundaries, tear out his boundary stone.''[95]

The passage just quoted incidentally brings out a striking parallelism between *ugaru,* 'meadows,'[96] 'commons,'[97] and the Hebrew *migrash,* or the com-

[94] On *ammat rabitu,* see Thureau Dangin, *Revue D'Assyriologie,* IV, 19. The Babylonian cubit seems at one time to have measured nine hundred and ninety millimetres (about a yard), sometimes referred to as ''a double cubit.'' (Johns, *B.A.L.C.L.,* 189.) If the latter designation is correct, a single cubit ($U = ammatu =$ Heb. *amma* = ell) would be four hundred and ninety-five millimetres. But in addition to the regular cubit of four hundred and ninety-five millimetres, there was also in use a larger cubit, called the 'royal' cubit, measuring at least five hundred and fifty millimetres. (Benz. *H.A.*,[2] 189.) Expressed in inches, a Babylonian cubit would be equivalent to about twenty inches. The cubit was frequently used by the Babylonian surveyor. E. Cuq, op. cit., 724, 736. The size of a field might also be determined by the amount of seed required in sowing it. Neb., Nippur, II, 25 f.

[95] Hinke, op. cit., Col. II, 25–Col. III, 15, 20–23, Col. IV, 19.

[96] pasture land(?). Cf. Neb., Nippur, III, 21. Pasture lands were common property. Cf. Sayce, *Bab. and Assyrians,* 110; Johns, op. cit., 186.

[97] Muss-Arnolt, op. cit., 15.

munal pasture lands of towns and villages. Further, it will be noted that the land was carefully measured, the results of the survey finding an important place in the conveyance. In keeping with his name, the surveyor[98] 'fixes limits,' and the area measured is known as the *pilku*,[99] or plot of ground. The boundary, as well as the boundary stone, are placed under the special protection of the gods, chiefly *Ninib*.[100] The above inscription closes[101] with a long series of anathemas and imprecations against any one removing or destroying the landmark:

"Whoever [removes] this stone,
hides it in the dust,
burns it with fire, throws it into water,
shuts it up in an enclosure, causes a fool,
a deaf man, a witless man to take it,
places it in an invisible place,
may the great gods as many as are mentioned
by their names on this stone, curse him
with an evil curse, tear out his foundation
and destroy his seed."[102]

There is reason for assuming a form of communism among the ancient Arabs. Under *Muḥamma-*

[98] *pa-lik eqlu shu-a-tu*, Col. III, 13; cp. *ma-shi-ḫa-an eqli*, "land (field) surveyor," from *mashaḫu*, to measure.

[99] cp. *pulukku*, boundary; *mi-shi-iḫ-tum eqli shu-a-ti*, 'the extent of this field.' Cyr. 188, 15; *mi-shiḫ-tu biti shu-a-ti*, 'the extent of this property.' *K.B.*, IV, 172.

[100] Cf. ll. 1–2 of the superscription: 'The name of this stone is *Ninib* and *Nusku* establish the boundary.' Cp. IV, 19.

[101] The names of the witnesses, fourteen in number, and the date of the transaction are given in Col. V, 8–26.

[102] Col. IV, 28–V, 7; cp. Deut., 19: 14; 27: 17.

dan law, as we have seen, near relations receive certain fixed shares of the decedent's property. It is worthy of special notice, however, that after the payment of these shares "a gratuity shall be given to every kinsman who is present at the distribution of a dead man's estate. And when there are no near heirs, or something remains over after they have got their due, the reversion falls to the *'aṣaba*, a word which primarily means those who go to battle together."[103] The individual warrior had no right to appropriate any of the booty taken from the enemy. At the close of the campaign the spoil was divided among the warriors, the chief of the tribe taking a fourth part.[104] The law of inheritance has much in common with the distribution of booty. The relation between the two "is easily intelligible, for among the nomads waters and pastures were and still are common tribal property, and moveable estate was being constantly captured and recaptured. Plainly the original theory was that it (the inheritance) also, since no man was strong enough to keep his own without help, was really tribal property of which the individual had only a usufruct, and which fell to be divided after his death like the spoils of war."[105]

In Arabic the most common appellation for the tribal group is *ḥayy*.[106] Although applying to a

[103] Smith, *Kinship*, 65.

[104] Cp. Sur. 8: 1: 'The spoils belong to God and to his Apostle.' 8: 42: 'To God belongs a fifth (of the booty), and to his Apostle, and to kindred and orphans, and the poor and the wayfarer.'

[105] *Kinship*, 67.

[106] Other Arabic terms employed to designate a tribe are *ma'shar*, *'ashira*, *baṭn* (Nöldeke, op. cit., 175), and *qabila* (Procksch, 4).

social group of almost any size,[107] "it usually means such a kindred group as was guided in war and on the march by one chief, migrating together and forming generally a single settlement, which might, however, consist of several *dars*,[108] or groups of tents, at some distance from one another."[109] The tribe has a common interest in the tribal possessions, consisting of camels[110] and dwellings.[111]

Arabic terminology draws no sharp distinction between a tribe and its component parts. According to Wellhausen several groups constitute a tribe, several clans make up a group, and a plurality of septs or 'families' forms a clan.[112] Defining the *ḥayy* as a tribe or a federation of tribes claiming

The latter term relates to the principal tribes of North Arabia (*Ma'add*). "The Northern Arabs called themselves *Ma'addites* even before the time of the prophet." *Kinship*, 10.

[107] Nöldeke says that *ḥayy* is exclusively used of large tribes. *Z.D.M.G.*, XL, 176. Procksch, however, remarks that the word refers to both large and small tribes. Originally it probably signified a small tribe, as in 1 S. 18: 18, where David exclaims: 'who am I, and who is my *ḥayy*, the clan (*mishpaha*) of my father?' *Ḥayy* in this passage evidently signifies 'clan.' So again, when speaking of the maiden of the *ḥayy*, the Arabic poet must have thought of a comparatively small kindred group. Procksch, op. cit., 3–4.

[108] *Dar* (plur. *diyar*) in Arabic refers to a complex of huts or tents grouped together in a circle or semi-circle. It may also apply to a single dwelling. (Cp. Ass. *duru*, wall.) Hebrew *dor* in the sense of dwelling occurs but once (Isa. 38: 12), the more common signification being a 'generation,' reckoned at a hundred years. (Gen. 15: 16.) Before Islam the palm groves and gardens of a Medinese *dar* were apparently regarded as the property of the entire clan. Wellhausen, *Skizzen u. Vorarbeiten*, 4, 18.

[109] *Kinship*, 44.

[110] *jimali-lḥayyi*.

[111] *diyaru-lḥayyi*.

[112] Op. cit., 19.

common descent, we must now inquire what were the Arabic equivalents for the smaller tribal units. In Arabic *ahl* refers to a group of people ranging in size from the people of a tribe[113] to the inhabitants of a camp of huts or tents.[114] The primary meaning probably had to do with a group occupying a single tent.[115] *Ahl,* it appears, is a very elastic term. Procksch would equate it with 'clan.'[116] Identical in meaning are two or three words cited by Nöldeke from the ancient literature of the Arabs.[117] The *Qabila* of *Fihr* applies to the individual clans of the *Quraysh.*[118] This is another illustration of the elasticity of certain Arabic terms, since *qabila* may signify either a tribe or a clan.[119] No less frequently used in the sense of clan is the word *baṭn:* 'for these *Kilab* consist of ten *baṭn,* and I have no responsibility for their ten *qabilas.*' A third synonym for clan is *faḫidh:* 'then he enumerated the clans of the *Quraysh tribe*[120] by tribe.' The usual terms for the 'family' under patronymic rule are *al* and *raḥṭ.*[121]

All these groups were held together by a feeling of solidarity resting upon the principle of descent from a common ancestor. In the nomadic stage the only bond of unity is kinship. But the transition to

[113] 'till we have deprived the tribe (*ḫayya*) of (its) people (*ahl*) and possessions (*mal*).' Procksch, 20, n. 1.

[114] *ahlu-ldari,* 'the people of the settlement.' Cp. Ass. *alu,* 'city,' or 'village.' Delitzsch, *H.W.B.,* 59.

[115] Cp. Heb. *ohel,* 'tent,' or 'dwelling.'

[116] Op. cit., 4, 19 f.

[117] Op. cit., 175.

[118] Compare the *qabilas* of tribes like the *Aws* and the *Ḫazraj.*

[119] See *baṭn,* 'tribe,' 'clan.'

[120] *qabilatan.*

[121] Procksch, 22.

an agricultural mode of life has a tendency to break down the old tribal system. Thus, *'Umar* I. complains that in order to designate their descent the farmers of *'Iraq* would merely give the name of some village instead of their tribal affiliation. In response to the query, *mimman anta,* 'to which people do you belong,' the answer was, 'to this or that village.' Of another group it is said, 'their genealogies are their villages."[122]

Unfortunately the records of ancient Arabia are silent as to the nature of land tenure in vogue among such village groups. We, therefore, turn to the *fallaḥin* of modern Palestine, whose village communities may be regarded as a survival of their more ancient Semitic prototypes.[123] These 'cultivators' generally dwell in unwalled villages. The adjoining lands are held on the communal principle as expressed by the Arabic *musha'a,* which means 'in common."[124] Until fifty years ago the environs of most towns and villages in Palestine were held in common. In the year 1277 of the *Muḥammadan* era, however, the Turkish Government divided the lands into various portions and compelled the peasants to take out title-deeds for them in severalty.[125] But

[122] Nöldeke, op. cit., 183.

[123] See below, pp. 231 f.

[124] The pasture lands of a village as well as the threshing floor belong to the community as a whole and not to any particular individual.

[125] Such is the tenacity of the *fallaḥin* to the ancient customs of the land that they prefer a number of small strips, sometimes far apart from each other, to the permanent possession of a portion of the soil within easier reach of their homes. This explains why the Turkish Government has to content itself in many cases with registering the names of all the members of a village community as joint-owners of the adjacent lands instead of recording the name of each individual as the permanent owner of a definite plot of ground.

in many of the outlying districts the old custom of collective holdings still survives.[126] Concerning the latter form of land tenure Neil remarks: "The greater part of the arable land of southern Palestine is not, strictly speaking, held as freehold or rented by industrial farmers.[127] The bulk of the soil consists of Crown lands, called in Arabic *arḍ amiriyya,*[128] of which the occupiers have only the *muzara'a,* or right of cultivation, though they possess this right in perpetuity."[129] These lands being arable, the native farmers often refer to them as *araḍi muftalaḥ,* or agricultural lands. To the eye of a stranger the arable and pastoral lands of a village have the appearance of an unbroken stretch of open fields.[130]

The first heavy rain[131] having saturated the sun-baked[132] soil, the male inhabitants of the village assemble in a kind of town-hall, called *Maḍyafa,* erected for the entertainment of strangers. Each individual member of the community being born to a right to cultivate a portion of the common lands

[126] Post, in *P.E.F.,* 1891, p. 105; also Bergheim, *P.E.F.,* 1894, p. 195.

[127] Seebohm, on the other hand, would interpret the system of land tenure obtaining in the Palestinian villages of the present time as semi-servile in character. But this is in keeping with the writer's theory as to the origin of the English village community. Cf. *The English Village Community,* 313 f. See below, pp. 231 f.

[128] i. e., land under the control of the *Amirs* (but which now belongs to the Imperial State).

[129] *Journal of Transactions of the Victoria Institute,* XXIV, 155 f.

[130] The fields which lie fallow are utilized as public commons.—Interesting parallels might be drawn from the open field system of the old English township.

[131] Heb. *geshem,* Palestinian Arabic *wasam,* or gushing downpour.

[132] A rainless, cloudless heat (dry season) holds full sway from the beginning of May until the latter part of October.

by virtue of the *haqq al muzara'a,* or right of cultivating, the presiding officer[133] writes down the names of those present together with the number of ploughs[134] that each man intends to employ. As a rule the farmers now gather into small groups of ten ploughs each, and a representative is chosen for each group. If there are forty persons in the village who desire to cultivate the soil, representing a total of sixty ploughs between them, the land is then divided by the six elected chiefs into six equal portions. As the quality of the soil often depends upon its location, each section is composed of lands chosen from different parts of the land of the community. These sections are distributed by lot among the six representatives in the following manner. Each of the latter gives a small pebble or piece of wood to the *Muḥammadan* preacher, who puts them into a bag. The preacher then calls out the name[135] of one of the six parcels of ground and asks, "To whom should this portion of land be allotted?" A boy under five then draws from the bag a lot, thus deter-

[133] *Imam,* called *Katib,* the *Muḥammadan* preacher, who also keeps the public accounts of the village and looks after the *Maḍyafa,* or guest chamber.

[134] Arabic *faddan,* 'a yoke of oxen.' On the plains two oxen constitute a normal plough-team (cp. Roman *iugum,* 'a yoke of two oxen'), whereas a yoke of four oxen is required for the heavier soil of the hill country. The *faddan* also represents the amount of land which a yoke of oxen can plough in a day.—In ancient Wales the arable strips were distributed among the cultivators according to the contributions made by each to the common plough-team of eight oxen. The agrarian unit of early England was determined by the amount of land which the normal plough-team of eight oxen could conveniently plough in a day. Cp. Ger. *Morgen,* or yoke.

[135] Almost every field has a name, to wit, the field of the rock, the field of the partridge, the field of the fight, etc. Cp. Mtt. 27: 7, 8, 10.

mining by chance which group shall be allotted the land.[136]

The six parcels are again divided by measurement with an ox-goad,[137] or rope,[138] according to the needs of each group. The Arabic term for such a subdivision is *maras*, from *marasa*, a rope. Some would associate the word with *mirath*,[139] inheritance, or allotted portion.[140] The several strips of each party are then distributed among the ten ploughs by lot. Once more the name of each field is written on some object or other, usually on a small pebble, which is then placed in a bag. Standing near the *Imam* of the village are two little boys under five years of age, one of whom now puts his hand into one of the six bags and draws out a pebble. Turning to the other boy the presiding officer then asks, "To whom should this portion of land be allotted," whereupon the latter either points to one of the bystanders or calls out his name, and the field is allotted to him

[136] A somewhat similar mode of distribution known as rundale (derived from *roinn*, 'lot,' and *diol*, 'portion;' hence division by lot) formerly prevailed in Ireland. This mode of tenure makes its appearance in the Highlands of Scotland under the name of *run-rig* (composed of *roinn*, 'lot,' and *ruith*, 'portion'). Compare the 'lot meadows' of the old English township. Distributions by lot were also known in mediaeval Germany and Russia.

[137] 8–9 feet in length.

[138] Ar. *ḥabl*, about 16 feet long. Cp. Heb. *ḥebel*, rope, or measuring line. Ezek. 47: 13; 48: 4–5. A cord or rope (Lat. *funiculus*, Ger. *rep*) was used by the ancient Teutons for the purpose of measuring off the several allotments. This instrument was subsequently replaced by the Teutonic rod (*virga teutonicalis*).

[139] Plur. *mawareth*. In the language of the peasants *mawareth* means inheritance. Bergheim, op. cit., 195.

[140] There is a reference in Mic. 2: 5 to the custom of allotting lands under the auspices of an Israelitish assembly. In the sixteenth Psalm the psalmist exclaims: 'The measuring lines are fallen unto me in pleasant surroundings, and over my lot I rejoice.' 16: 6.

accordingly. The same process is repeated until every owner of a yoke of oxen has received his *faddan* of land. It goes without saying that the man who possesses more than a yoke of oxen would be entitled to a corresponding allotment. In like manner the land is sometimes divided into half *faddan* for the accommodation of villagers owning but one ox, or a half yoke.[141] Lacking one ox a man will frequently join the ranks of the 'hired servants,' or farm hands.

A furrow of double width, called *taḫm*, separates one man's allotment from that of his neighbor. As a safeguard against heavy rains stones are placed at each end of the boundary lines. To remove 'the stones of the boundary,"[142] while the soil is in a state of cultivation is regarded as a great sin. An offense of this nature would deprive the cultivator, not of the land in question, but of part of the produce. Individual rights to the arable land of a village cease when the farmer has gathered in the fruits of his labors for that year.[143]

In addition to the tithe[144] on all natural products the farmer pays a land-tax of from twenty to sixty *paras* per Turkish acre. To facilitate matters the Government farms out the tithe to tax-gatherers[145] who resort to every possible means to wrest from the poor farmer a sum far in excess of a tenth of the produce.

[141] Compare the plough lands of India.

[142] *Ḥijar-ltaḫm.*

[143] A similar custom is met with in the rural arrangements of many Aryan village communities.

[144] *'ashar.*

[145] *multazamin;* cp. the publicans of the New Testament.

CHAPTER XII

EZEKIEL'S PLAN OF ALLOTMENT

Ezekiel's restoration programme is in many respects even more remarkable than the enactments relating to the year of jubilee. With bold idealism, bordering on the miraculous, the national and tribal boundaries are drawn as if the natural contour of the land had suddenly undergone a marvelous transformation. Barren limestone deposits shall be clothed with an almost tropical luxuriance, and the desert shall blossom as the rose. The Dead Sea itself and all the regions round about shall be reclaimed by virtue of a healing stream issuing from the base of the Temple Hill, where Yahwe dwells in inaccessible holiness.[1] Ideal conditions shall prevail throughout. The renewal of the land, intended for the permanent occupation of a purified and 'holy' people, is a necessary corollary to the refining process of the Babylonian exile. 'I will restore the fortunes of Jacob, and have mercy on the whole house of Israel, . . I will hide my face from them no more when I shall have poured out my spirit on the house of Israel, saith the Lord.'[2]

The sacred territory is conceived as a long rectangular strip of country, extending from the vicinity of *Banias*[3] in the north to the southern extremity

[1] 47 : 1 f.

[2] 39 : 25, 29. Cf. Toy, *Ezek.*, in *S.B.O.T.*, p. 70.

[3] Caesarea Philippi.

of the Dead Sea.[4] On the west the boundary-line is formed by the Mediterranean Ocean and on the east by the Jordan and the Dead Sea. For some reason the entire transjordanic portion of the land is excluded, thus necessitating the transfer of the tribes of this region to the west. The land is then divided into twelve parallel transverse sections of equal magnitude,[5] seven of these constituting the northern group, viz. Dan, Asher, Naphtali, Manasseh, Ephraim, Reuben, and Judah; the remaining sections south of the sacred 'oblation' being assigned to the tribes of Benjamin, Simeon, Issachar, Zebulun, and Gad.[6] Individual allotments to the heads of families and households shall be in proportion to the relative size of a tribe as a whole. Full rights of citizenship are to be accorded aliens on the basis of residence and of their acceptance of Yahwism. 'Ye shall divide this land among you according to the tribes of Israel. Ye shall allot it as an inheritance for yourselves and for the aliens residing among you who have begotten children among you; and they shall be reckoned with you as the native-born[7] among the Israelites; they shall be assigned a portion with you among the tribes of Israel. And among whatever tribe the alien may happen to reside, there shall ye give him an hereditary possession, saith the Lord.'[8] Resident aliens and their families would be a welcome addition to

[4] 47: 15 f. Compare diagram on page 205.
[5] 47: 14.
[6] 48: 1 f.
[7] This is the earliest passage in which the term *ezraḥ* occurs. It is frequently met with in *H* and *P*. Bertholet, *S.I.F.*, 110 f.; 160.
[8] 47: 21–23. Cp. Kent, op. cit., p. 184.

the population after the many misfortunes of past days.[9]

It is noteworthy that in Ezekiel's arrangement of the tribes the sons of Leah and Rachel are evenly distributed on both sides of the sanctuary, while the sons of Jacob's handmaids are relegated to the extreme north and south of the sacred 'oblation."[10] Tribes of pure blood would no doubt be regarded among the ancients as possessing a higher degree of ceremonial purity and sanctity than a tribe which is the result of an ethnic mixture. Objects of lesser purity must be removed as far as possible from the dwelling-place of Yahwe in keeping with the principle of separation and gradation inherent in the Old Testament conception of holiness.

The arrangement of the tribes, however, is but the outer framework, as it were, of Ezekiel's plan of apportionment. His real interest is centred on the sacred oblation[11] lying between the tribes of Judah and Benjamin, which is to be reserved for religious and public purposes.[12] This reservation, extending from the Jordan to the Mediterranean, is to be twenty-five thousand cubits[13] broad. The entire area is divided into three parts by two imaginary lines running from north to south, thus resulting in the formation of a perfect square in the centre with a base line of twenty-five thousand cubits. By means of two horizontal lines this square is sub-

[9] 36: 38; 37: 1 f.

[10] Kraetzschmar, *Ezek.*, 297.

[11] *teruma layahwe* (45: 1), an offering of land to Yahwe.

[12] 48: 8–22.

[13] i. e., approximately eight miles, Ezekiel's long cubit being about twenty inches. Kraetzschmar, op. cit., 264; Toy, op. cit., 179.

divided into three parallelograms. Of these the central portion, measuring twenty-five thousand cubits from north to south, is by far the most important. In the midst of this area stands the temple, the gravitating centre of the national life. The whole enclosure, described with great minuteness of detail, is to be a square of five hundred cubits surrounded by an open space[14] of fifty cubits on all sides.[15] Every precaution must be taken to guard its sanctity from all defiling contact with the outside world. 'On the top of the mountain[16] its whole territory shall be most sacred. This is the law of the temple.'[17]

Foreign slaves, once engaged in the performance of menial duties connected with the temple of pre-exilic times, shall now be displaced by the priests of the rural shrines.[18] The Zadokites alone, who had ministered in the royal sanctuary since the days of Solomon,[19] shall continue in the exercise of their priestly prerogatives.[20] By reason of their special sanctity the Zadokite priests are to occupy the remaining portion of the central reservation within the sacred oblation in order to maintain a holy cordon round the temple.[21] The space assigned to them belongs to Yahwe in a very peculiar sense. It is absolutely inalienable. Priests, as a matter of

[14] *migrash.* Cp. Arabic *ḥima'*.
[15] 40–43; 45: 2.
[16] Zion; cp. 40: 2 f.
[17] 43: 12.
[18] 44: 6–14.
[19] 1 K. 2: 27, 35.
[20] 44: 15–27.
[21] 45: 4; 48: 11–12.

fact, can hold no landed property in their own name like the other tribes of Israel. "They shall have no[22] inheritance; I am their inheritance . . They shall eat the cereal-offering,[23] and the sin-offering,[24] and the guilt-offering;[25] and every devoted[26] thing in Israel shall be theirs. And the best of all the firstfruits[27] . . and every contribution[28] . . shall belong to the priest."[29] Cereal oblations paid in tribute to the Deity, as well as fines for ceremonial offenses, are now appropriated to the support of the officiating priesthood by way of compensation for services rendered at the sanctuary.

The revenues of the pre-exilic priesthood do not appear to have been the subject of any such precise regulations. To begin with, the remuneration of Micah's priest is subject to the terms of a verbal agreement between the contracting parties.[30] The passage in 1 Sam. 2: 12 f. proves that the priests of Shiloh, though entitled to some compensation for

[22] לֹא, required by context. Toy, op. cit., 195; Kraetzschmar, op. cit., 285.

[23] הַמִּנְחָה, consisting of unbaked flour, salt, and oil, and sometimes accompanied by a libation of wine.

[24] הַחַטָּאת, usually a goat or a bullock (ceremonial offense).

[25] הָאָשָׁם, a goat, lamb, ram, or bird (ceremonial offense). According to 2 K. 12: 17 the sin-money and the guilt-money went to the priests.

[26] חֵרֶם, anything irrevocably 'devoted' to Yahwe; cp. Deut. 18: 4.

[27] בִּכּוּרִי, strictly limited to grain and fruit.

[28] תְּרוּמָה, oblation, or gift.

[29] 44: 28–30; cp. 42: 13. Cf. Kent, op. cit., p. 179.

[30] See above, p. 69.

their services,[31] had no legal claim to any definite perquisites. Custom insists on the right of the individual sacrificer to give to the officiating priest whatever portion of the flesh he chose. The portions thus given belong in the category of voluntary gifts. The vague character of the priests' dues at this early period inferentially led to numerous abuses. 'Now the sons of Eli were wicked men. They knew not Yahwe, nor the rightful due of the priest from the people.[32] When a man sacrificed, the priest's servant would come, at the boiling of the flesh, with his three-pronged fork in his hand, and would strike it into the pot or the pan or the kettle. All that the fork brought up the priest would take for himself. So they did to all Israel that came to sacrifice in Shiloh. Moreover, before they burned the fat, the priest's servant used to come and say to the offerer: Give roasting-flesh for the priest—he will not take boiled flesh from thee, but raw. If the offerer said unto him: They are going to burn the fat at once, then take whatever you please, he would reply: No! You shall give it at once or I will take it by force.'[33] According to Deut. 18:3 the officiating priest is entitled to the shoulder, the two cheeks, and the maw of the sacrificial victim.[34]

Ezekiel's provision of food for the priest is in substantial agreement with Deut. 18:1–5, though

[31] Buhl, *S.V.I.*, 86.

[32] Smith, H. P., *Samuel* (*Int. Crit. Com.*), 18; Driver, *Deut.*, 215 f.

[33] The shewbread loaves, spoken of in 1 Sam. 21:7, could be used by the priests of Nob as a means of sustenance.

[34] Lev. 7:32–34 ordains that the breast and right shoulder of the peace-offerings be reserved for the priest.

of a more definite character.[35] Deuteronomy enjoins that 'the Levitical priests, even the whole tribe of Levi, shall have no portion or inheritance in Israel. Yahwe's fire-offerings, and his inheritance shall they eat. Yahwe is their inheritance.'[36] As the representatives of the Deity they may claim a portion of the offerings brought to the various shrines throughout the country. But the gradual centralization of the worship at Jerusalem deprived many of the rural priests of the necessary means of support. To remedy this in a measure the Deuteronomist appeals to the charitable instinct of his fellow-countrymen. The Levites of the land are not to be overlooked on the occasion of sacred festivity: 'thou shalt not forsake the Levite who is within thy gates[37] for he hath no portion or inheritance with thee.'[38] The Levitical priest, frequently classed with the resident alien, the fatherless and the widow, is likewise commended to the generosity of the individual worshippers. Part of the triennial tithe is to be stored up by the Israelite in his native place, so that 'the Levite, because he hath no portion or inheritance with thee, and the resident alien, the fatherless, and the widow, who dwell within thy town, may come, and eat and be satisfied.'[39] Finally, the Levite and the destitute members of the com-

[35] For additional sources of income enjoyed by the priests of later times, see Buhl, op. cit., 87–88. Cp. Lev. 7; 27: 30–33; Num. 3: 46–48; Ezra 7: 24; Neh. 12: 44–47; Num. 18: 20–31.

[36] Deut. 18: 1, 2; cp. 10: 9; 12: 12.

[37] 'town,' 'city.'

[38] Deut. 14: 27.

[39] 14: 29; cp. 26: 12 f. The tithe of the third year constitutes one of the chief sources of income of the rural priesthood.

munity shall share in the feast of weeks, and in the feast of tabernacles. 'Thou shalt rejoice in thy feast, thou, and thy son, and thy daughter, and thy male and female slaves, and the Levite, the resident alien, the fatherless, and the widow who are in thy city.'[40]

The territory immediately to the north of the priests' allotment, twenty-five thousand cubits in length and ten thousand cubits in breadth, is assigned to the Levites.[41] Land lying within the holy oblation is withdrawn from the range of private ownership. "And none of this choice part of the land shall be sold or exchanged or alienated; it is sacred to Yahwe."[42]

The distinction drawn by Ezekiel between priests and Levites was wholly unknown to Deuteronomy.[43] In Deut. 18:6–8 it is made a legal injunction that any country Levite is to have the right to officiate at the central sanctuary and receive an equal share with the priests resident on the spot, if he so desire. This provision does not appear to have been fully carried out owing to the exclusiveness of the temple priesthood and the state of things created by the abolition of the high places in the reign of Josiah. The centralization of the worship and the destruction of the rural altars throughout the length and breadth of the land meant a material decrease in the number of offerings and a more than sufficient

[40] 16:14; cp. 16:10 f.

[41] Ezek. 45:5; 48:13.

[42] 48:14. Cf. Toy, ad loc.

[43] 'the priests the Levites;' cf. Deut. 17:18; 18:1; 21:5; 27:9; 31:9.

number of clergy at the central sanctuary. The disestablished priests, coming from the provinces to Jerusalem, were allowed to share in the priestly dues, but were not admitted to the exercise of sacerdotal functions at the royal sanctuary.[44] Ezekiel's legislation regarding these provincial priests is the logical outcome of the historical situation consequent upon the reforms of Josiah. The fact that Ezekiel was a member of the Zadokite family[45] may have furnished an additional reason for restricting the priesthood to the sons of Zadok. Thus it becomes somewhat more intelligible why no special provisions are laid down by the prophet concerning the maintenance of the degraded Levites. The territory assigned to them shall be 'for cities to dwell in.'[46] Instead of being limited to a single district, the priestly code distributes the Levitical cities over the entire country. According to Num. 35 and Josh. 21 forty eight such cities with the surrounding pasture lands[47] shall be set apart for the Levites. Many scholars assume that these cities merely stood for the desires of the clergy.[48]

As regards the revenues of the Levites in *P* the law is that nine-tenths of the annual tithes shall belong to the inferior members of the priestly tribe; the remaining tenth is to be given to the priests.[49]

[44] 2 K. 23: 9.

[45] Ezek. 1: 3; 4: 14.

[46] LXX: πόλεις τοῦ κατοικεῖν; cf. Num. 35: 2; Josh. 14: 4.

[47] *migrashim*, 2000 cubits on all sides.

[48] Wellhausen, *Proleg.*, 159; Benzinger, *H.A.*,[2] 385; Gray, *Num.*, 465 f.; Toy, op. cit., 197; Kent, op. cit., 191. But see Eerdmans, *Lev.* (*Alttest. Stud.*, IV), 132–133.

[49] Num. 18: 21 f., 26 f.

But the humane intention of the lawgiver was frustrated by the opposition of the leading representatives of the priesthood.[50] Finding that the Levites had been obliged to work in the fields for their support, Nehemiah undertook to regulate the payment of the tithes, and to insure their proper distribution trustworthy officials were appointed. How long tithes were paid to the Levites, we do not know. After no considerable lapse of time the tithes are again diverted into priestly channels. In later Judaism the tithes are entirely appropriated by the chief priests.[51]

A strip of land,[52] twenty-five thousand cubits long and five thousand cubits wide, south of the priests' allotment, is set aside for the city and its common lands.[53] The city itself is a square of forty-five hundred cubits, surrounded on each side by an open space[54] of two hundred and fifty cubits. East and west of the capital are the communal possessions reserved for agricultural purposes. The population of the city shall be representative of all the tribes of Israel, inasmuch as the whole tract did not belong to any particular tribe.

In later times the problem of peopling Jerusalem was a serious one. "The people cast lots to bring one of ten to dwell in Jerusalem, the holy city, and nine parts in (other) cities. And the people blessed

[50] Neh. 13: 5, 10 f.

[51] Josephus, *Ant.*, XX, 8: 8; 9: 2.

[52] חֹל territory given over to secular uses in contradistinction to the sacred territory of the priestly tribe; 48: 15; cp. 42: 20b.

[53] 45: 6; 48: 15–20.

[54] *migrash.*

all the men that willingly offered themselves to dwell at Jerusalem.''[55] Agriculturists depending on the soil in the immediate vicinity of the Judean capital would naturally be poorly repaid for their labors. Unfortunately no miraculous transformation of the land had preceded the return of the exiles from Babylonia.

The crown lands of the prince,[56] flanking the sacred reservation and the domain of the city on the east and west, shall be ample enough for all the needs of the royal family and its dependents.[57] Crown lands given by the prince to his courtiers[58] revert to the crown in 'the year of release.'[59] In the theocratic state of the future any arbitrary exercise of royal power will be rendered impossible: ''the princes of Israel[60] shall no more oppress my people, but shall give the land to the house of Israel according to their tribes.''[61] The only concession made to the rights of royalty is the collection of a fixed tariff[62] by the prince, chiefly intended for the

[55] Neh. 11: 1–2.

[56] נָשִׂיא.

[57] 45: 7; 48: 21–22.

[58] 'An officer, constable, or tax-gatherer shall not deed to his wife or daughter the field, garden, or house, which is his business (i. e., which is his by virtue of his office), nor shall he assign them for debt. He may deed to his wife or daughter the field, garden, or house which he has purchased and acquired, or he may assign them for debt.' The Code of *Ḫammurabi*, §§38–39.

[59] 46: 16–18. Probably the fiftieth year. Cf. Toy, ad loc.

[60] Cp. LXX.

[61] 45: 8; cp. 45: 9–12. Toy, op. cit., p. 82.

[62] *teruma*, oblation, or temple tax, payable in kind, viz. $\frac{1}{60}$ of wheat and barley, $\frac{1}{100}$ of oil, and of lambs one out of every two hundred.

support of the temple ritual.[63] He is to be a servant of the temple and a provider of material for all sacrifices. This excellent arrangement never passed out of the realm of theory into that of fact. The actualities of the situation after the exile were materially different from those contemplated by the prophet.

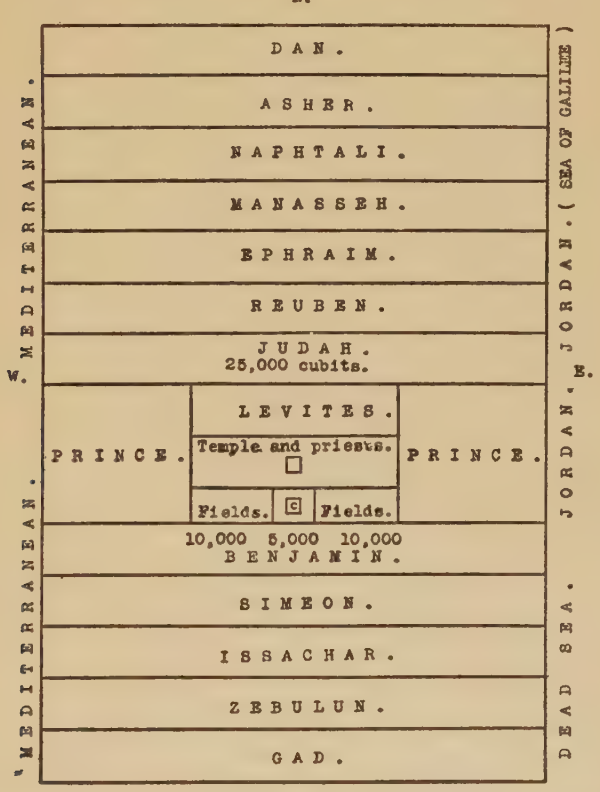

Diagram of Ezekiel's Plan of Allotment, Chap. 48. Cf. Toy, op. cit., 197.

[63] 45: 13–17.

CHAPTER XIII

TAXATION AND TRIBUTE

As among the nomads of the desert,[1] so among the ancient Israelites, the only prerogative accorded the chief is a special share of the spoils of war. Thus the gold rings of the conquered Midianites fall to Gideon at the latter's own request.[2] Similarly, it may be taken for granted that Saul was entitled to a larger share of the spoil than the average warrior. Of the booty captured from the Amalekites under the leadership of his rival, David receives a liberal portion with which he enriches the elders of Judah and his kinsmen at Bethlehem.[3]

There is no such thing as taxation in the proper sense of the term before the regal period. Indeed, it is extremely doubtful whether the simple arrangements of Saul's reign called for any special dues or fixed taxes. The income from his paternal estate, together with the voluntary gifts of his subjects seeking his protection and favor,[4] inferentially sufficed for the modest requirements of the peasant-king at Gibeah. The rights of kings, adverted to in 1 Sam. 8:10 f., may be taken to represent the point

[1] In ancient Arabia one-fourth of the booty went to the chief. The prophet of Islam converted the chief's fourth to a fifth, payable to *Allah* and his apostle. Cf. p. 186.

[2] Judg. 8:24.

[3] 1 Sam. 30:26 f.; cp. 1 Sam. 22:7; 2 Sam. 1:10; 8:11; 12:30.

[4] Cp. 1 Sam. 10:27; 16:20.

of view of a later age.[5] According to the author of the passage, the king is nothing but an oriental despot, exercising the right of levying taxes, and requiring burdensome exactions of his subjects, even to the extent of taking their property without offering any compensation in return. 'This is the right of the king[6] who shall rule over you: Your sons will he take in order to place them in his chariots and among his horsemen, that they may run before his chariots, and in order to make them captains of thousands and captains of fifties,[7] and that they may plough his land and reap his harvest, and that they may make his arms and his chariot furniture. Your daughters will he take (and compel them to serve) as perfumers, and as cooks, and as bakers. He will take the best of your fields and your vineyards and your oliveyards, and give them to his servants. Your grain fields and your vineyards he will tithe[8] and give the proceeds to his eunuchs and to his servants. Your male and female slaves, and the best of your cattle and your asses will he take and utilize them for his own purposes. Your small cattle he will tithe, but ye shall be his slaves.'

1 Sam. 17: 25 promises freedom from exactions of service and of property to the man who shall smite

[5] Nowack, *Sam.* (*H.K.A.T.*), 36 f.; Smith, H. P., *Sam.*, 55 f.; Benzinger, op. cit., 259, n. 1.

[6] 1 Sam. 10: 25; Deut. 17: 14 f.

[7] 'hundreds,' so LXX. Cp. 1 Sam. 22: 7; Deut. 1: 15; Num. 31: 14, 48, 54.

[8] The tithes collected by the Persian satraps constituted a most important source of revenue. Aristotle, *Econ.* (Berlin Ed.), p. 1345b. For modern Syria, see p. 193; also Bergheim, in *P.E.F.* (1894), 197 f.

Goliath as well as to his father's house. This reference, however, relates to conditions obtaining at a date posterior to the reign of Saul.[9] Under David the impressment for public service was entrusted to an official, named Adoram.[10] The number of Israelites impressed to labor on Solomon's buildings and fortifications is said to have been thirty thousand,[11] not to mention a second levy of seventy thousand burden bearers, and eighty thousand hewers of stone.[12] To free the native Israelite population from the stigma of the *corvée,* the chronicler prefaced the contents of 1 K. 5:15 (29) with the statement that, according to a census taken by Solomon of all the aliens in Israel, the number of serf-like laborers engaged in Solomon's works coincide with that of the alien population of the land.[13] For some reason, no longer ascertainable, the chronicler makes no mention of the first levy, already alluded to.[14] However, the forced labors of Solomon's reign bore heavily upon aliens and Israelites alike. As soon as the opportunity presented itself, the protest of the people against the oppressive yoke of compulsory service took the form of a revolt leading to the secession of the Northern Kingdom.[15] Not wishing to incur the displeasure of his remaining subjects,

[9] A large number of Greek manuscripts omit the greater part of chapter 17, to wit, 1 Sam. 17:12–31. Nowack, op. cit., 83 f.

[10] 2 Sam. 20:24; 1 K. 4:6; 5:14 (28); 12:18; 2 Chron. 10:18; cp. Ex. 1:11; Judg. 1:28.

[11] 1 K. 5:13 (27).

[12] 1 K. 5:15 (29); cf. Nowack, ad loc.

[13] Cp. Curtiss, *Chronicles* (*Int. Crit. Com.*), 320 f.

[14] 1 K. 5:13–14 (27–28).

[15] 1 K. 12:4 f.

Rehoboam, in all probability, temporarily dispensed with this oppressive measure.

The tribute received from subjugated peoples was a most valuable source of revenue under the Hebrew monarchy. David's 'governors' in Edom were doubtless charged with the collection of tribute from the conquered territory.[16] The author of 1 Kings 4:21 speaks of nations paying tribute to Solomon.[17] Mesha, the king of Moab, mentioned in 2 Kings 3:4, was responsible to Ahab for the payment of an annual tribute amounting to a hundred thousand lambs, in addition to the wool of a hundred thousand rams. According to the Moabite Stone,[18] commemorating Mesha's successful campaign against the Israelites, the Moabites became tributary to Israel in the days of Omri.[19]

It appears that the census taken by David was prompted primarily by a desire to ascertain the full military strength of the people.[20] Popular opinion, as voiced by Joab's protest, regarded it as a sin. The reason for this is not given. Perhaps the census also had reference to taxation. As the institution of political taxation meant the curtailment of the old tribal rights,[21] such an innovation

[16] 2 Sam. 8:14.

[17] Cp. 1 K. 5:1. Nowack treats the passage as a gloss.

[18] About 850 B. C.

[19] But compare 2 Sam. 8:2, where David is credited with exacting a tribute (*minha*, 'present') of the Moabites. Nowack, however, regards 2 Sam. 8:1–6 as the work of a later redactor. Cf. 1 K. 4:19.

[20] 1 Chron. 27:1–15.

[21] It is worthy of observation that Solomon's division of the land into administrative districts virtually overlooks the old tribal distinctions. The list in 1 K. 4:7–19 bears witness to the ancient dualism subsisting between the Hebrew tribes and the city states of Canaan. Cf. Alt, in *Kittel's Beitraege z. Wiss. v. A.T.*, v. 13, pp. 1–19.

must have met with considerable resistance on the part of the tribes and their representatives.[22] The monarchy, of course, triumphed in the end. Solomon's division of the kingdom into twelve departments was apparently connected with the levying of taxes, each of the twelve 'prefects' being required to furnish the necessary victuals for the royal court and the king's army for one month in the year.[23] But it is especially noteworthy that the chief centres of the Judean population, such as Jerusalem, Bethlehem, and Hebron, do not seem to have been included in Solomon's division of the kingdom into districts, thus implying that the king's own tribe was for the most part exempt from taxation.[24] 1 Kings 10:14 f. tells us that Solomon's annual income, in addition to numerous imposts levied on the caravan-trade,[25] and the tribute received from the prefects

[22] The free tribes of the Arabian desert know nothing of taxation. "The chiefs derive no revenue from their tribesmen, but, on the contrary, are expected to use their wealth with generosity for the public benefit." Smith, *Rel. Sem.*,[2] 459. For the chronicler's list of the twelve tribal princes of Israel, see 1 Chron. 27:16–24.

[23] 1 K. 4:22–28 (1 K. 5:2–8); cp. 1 K. 20:14 f.

[24] 1 K. 4:7–19. Cf. Benzinger, *Könige* (*K.H.K.A.T.*), 19 f., Kittel, ad loc.; compare also Stade, *G.V.I.*, I, 305.

[25] The Babylonian kings levied a tithe on all imports. Aristotle, *Econ.* (Berlin Ed.), 1352[b]. Instances are on record of a similar tithe among the Meccans. Smith, *Rel. Sem.*,[2] n. 3. As to the nature of Israelitish imports, see Isa. 60:6; Cant. 3:6. Buhl, op. cit., 80 f., Schürer, *Geschichte des Jüdischen Volkes* (1898), II, notes 149–151. Ezekiel's enumeration of the articles exported to Phoenicia includes wheat, honey, oil, rosin, and the oaks of Bashan. 27:6, 17. According to 1 K. 5:10–11 (1 K. 5:24–25) Hiram agrees to furnish sufficient lumber for the Solomonic temple in return for a yearly payment of twenty thousand kor (Bab. *gur*) of wheat and twenty thousand bath of the finest oil. But compare 1 K. 9:10–13; Benz-

of the provinces, amounted to six hundred and sixty-six talents of gold, or about twenty millions of dollars.[26] Modern critical scholars, however, virtually agree in assigning the passage to a much later date than that of Solomon.[27] Be this as it may, Solomon's method of levying taxes must have been, to judge from the sequel, extremely unpopular.[28]

In extraordinary cases recourse was had to the treasures of the temple. To begin with, the gifts sent by Asa to Benhadad of Syria as an inducement to fight against Baasha, the king of Israel, belonged in part to the royal sanctuary.[29] Jehoash's tribute to Hazael of Syria was materially supplemented by the treasures found in the temple, representing the dedicatory offerings of the kings of Judah, and of the people in general.[30] In consequence of the tributary relation of the Northern and Southern Kingdoms to Assyria both Ahab and Hezekiah were obliged to resort to the temple for a similar purpose.[31] Obviously the temple at Jerusalem was

inger, op. cit., 29. A Babylonian document from the Temple Archives of Telloh records the payment of a royal tax consisting of six hundred and twenty six talents of (*Gish-*) *Manu* wood (*Gish-Ma-Nu* = *Eru* = cedar) and a large quantity of binding reeds, which were probably used for making ropes. Barton, in *A.J.S.L.*, XXVII, 325; cp. vol. XXVIII, 65. In another tablet we find an entry of a hundred talents of *Abba*-wood as a tax to the king. Ibid., op. cit., XXIX, 140. Large quantities of *Abba*-wood were deemed indispensable by *Ḫammurabi* in ship-building. King, *Letters and Inscriptions of Ḫammurabi*, III, 53.

[26] 2 Chron. 9: 13 f.

[27] So Kittel, Benzinger and others.

[28] 1 K. 12: 4 f.; cp. 1 K. 5: 2–8.

[29] 1 K. 15: 18.

[30] 2 K. 12: 5, 19.

[31] 2 K. 16: 18; 18: 14–16.

regarded as a sort of state treasury,[32] which could be drawn upon at critical moments.

We also hear of a tribute paid by Menahem of Israel to Tiglathpileser[33] amounting to a thousand sheqels of silver. This amount was raised by the imposition of a tax of fifty sheqels on every land-owner of means throughout the kingdom.[34] 2 Kings 23:35 relates to a property-tax imposed by Jehoiakim of Judah with a view to satisfy the demands of Pharaoh. To make up a war-tax of ten[35] talents of gold and a hundred talents of silver, each property owner is required to pay a land-tax proportionate to the size of his holding.[36]

In addition to these taxes levied for the most part under extraordinary circumstances, mention is made of the 'king's mowings,' intended for the support of the royal cavalry.[37]

The heavy tribute, exacted by the Persian overlords of the fifth century[38] B. C., pressed heavily on the poorer members of the Jewish community.[39] Unfortunately the extant data afford no clue as to

[32] The temple of Melcarth at Tyre was the state treasury. Smith, *Rel. Sem.*,[2] 246.

[33] There can be no question as to the identity of *Pul* (Ass. *Pulu*) with Tiglathpileser (745–727 B. C.). In one of Tiglathpileser's inscriptions Menahem is credited with the payment of tribute (738 B. C.) to the king of Assyria. Tiele, *Bab. Ass. Gesch.* 110 f., 226 f., Schrader, *K.A.T.*,[2] 222 f.

[34] 2 K. 15:19–20. Allowing three thousand sheqels to a talent, the *gibbore hayil* in the land of Ephraim would approximate about sixty thousand men.

[35] So LXX; cf. Kittel, ad loc.

[36] 2 K. 23:34–35.

[37] Am. 7:1; cp. 1 K. 18:5.

[38] Ezra 4:13, 20.

[39] Neh. 5:4 f. Cf. pp. 131 f.

the manner in which this obligation was to be met. However, the numerous details incidental to the assessment and collection of taxes were evidently patterned after the established precedents of the local Jewish authorities.

Besides the burden of taxation imposed upon the people, the Persian governors, who had preceded Nehemiah, drew forty sheqels[40] of silver each day for the purchase of bread and wine.[41] Furthermore, the subordinates of the several satraps seem to have availed themselves of every opportunity to enrich themselves at the expense of the common people. Nehemiah's gratuitous services as satrap of the king of Persia stand in striking contrast with the oppressive rule of his predecessors.[42]

According to a decree of Artaxerxes to Ezra, the priests and Levites, together with the whole personnel of the temple, were to be exempt from taxation.[43] At a later period Antiochus the Great extended the same privilege to the priesthood of Jerusalem, including exemption from the crown tax.[44]

In consequence of the friendly attitude of the Jews and the voluntary surrender of the Jewish capital to Antiochus the Great, the latter issued a decree exempting the inhabitants of Jerusalem from all

[40] About twenty five dollars.

[41] It is interesting to note that the royal messengers of the Ur Dynasty (2400–2300 B. C.) were furnished with provisions by the temples. *A.J.S.L.*, XXIX, 127 f.

[42] Neh. 5: 14–15.

[43] Ezra 7: 24.

[44] Josephus, *Ant.*, XII, 3: 3. Originally the crown tax was a voluntary gift to the king of a golden crown of honor. Ibid., XIII, 2: 3.

imposts for a period of three years. It was further enacted that a third part of their taxes should be remitted thereafter, so that they could repair the losses which they had sustained in the past. Another clause provides that no toll should be levied on lumber necessary for the rebuilding and completion of the temple.[45] Without doubt this was a very valuable concession to the depopulated city, with its slender resources and lack of funds.

The poll-tax levied by the Syrian kingdom under the Seleucids was not a uniform personal tax but a kind of trade-tax varying with the nature of the enterprise and the income of the individual.[46] Thus we have what may be called a crude form of income-tax, although it was not actually assessed on income.

In the days of the Ptolemies the taxes were farmed to the highest bidder.[47] The taxes due from the cities appear to have been let by the king from year to year.[48] Sometimes the privilege of collecting the taxes of the several provinces[49] was sold to one individual, as in the case of a certain Joseph, who promised to pay twice as much[50] for the privilege as his competitors.[51] Since any surplus would naturally fall to the collector of taxes, Joseph eventually became a man of great substance.[52]

[45] Josephus, loc. cit.

[46] Aristotle, *Econ.*, II, 1: 4; Josephus, op. cit., XIII, 2: 3. Cf. Schürer, *G.J.V.*,[3] I, 229, n. 14.

[47] Josephus, op. cit., XII, 4: 1.

[48] Ibid., XII, 4: 3.

[49] Judea, Samaria, Phoenicia, and Coelesyria.

[50] sixteen thousand talents.

[51] Ibid., XII, 4: 4.

[52] Ibid., XII, 4: 5, 6, 10. Cf. p. 193.

From the Maccabaean period onwards the question of immunity from taxes comes to the fore in an unprecedented manner by reason of internal dissensions in the Syrian empire. In order to gain Jonathan's friendship Demetrius I. promises to the Jews[53] exemption from taxes of every sort, including the poll-tax and the crown-tax, all imposts on salt, grain,[54] and fruit,[55] as well as the remission of a tax on the tithes of the temple. Finally, all requisitions on beasts of burden were to be dispensed with.[56] Jonathan,[57] however, found it expedient to reject the offer until the accession of Demetrius II., when the concessions proffered by the unfortunate king[58] were ratified by his son.[59] At a later date Simon[60] sent an embassy to Demetrius II. with a view to secure immunity from taxes for all time to come. The request was granted.[61] This amounted, for all practical purposes at least, to a recognition of the political independence of Judea.

After Pompey's successful campaign[62] against Jerusalem, the land became tributary to the Romans.[63] In the year 57 B. C., or thereabouts,

[53] Judea, Samaria, Galilee, and Perea.

[54] 33⅓%.

[55] 50%.

[56] 1 Macc. 10: 28 f., Josephus, loc. cit.

[57] 161–143 B. C.

[58] Josephus, XIII, 2: 4.

[59] 1 Macc. 11: 34 f.; Josephus, XIII, 4: 9. Immunity was also secured for the three Samaritan provinces of Ephraim, Lydda, and Ramathaim, which had been ceded to Judea.

[60] 142–135 B. C.

[61] 1 Macc. 13: 34–39; cp. Josephus, XIII, 6: 7.

[62] 62 B. C.

[63] Josephus, XIV, 4: 4; *Bell. Jud.*, I, 7: 6.

Gabinius, the proconsul of Syria, divided the country into five administrative districts,[64] probably with a view to facilitate the levying of taxes by the local authorities.[65] Caesar's decree of the year 47 B. C. relieved the Jews of the obligation to provide the Roman troops with suitable winter quarters, thus cancelling the right of the latter to levy contributions from the inhabitants of the land.[66] As a further proof of his friendly disposition toward the Jews, Caesar ordained that the former should pay a definite composition as tribute every year, the seventh year excepted, owing to the cessation of agricultural pursuits in the sabbatical year.[67]

The fact that the tribute of the Jews was not to be subject to collection by tax-farmers[68] may be regarded as an important concession to the native authorities.[69] Being a confederate[70] of the Romans, Herod the Great could exercise a remarkable degree of freedom as to the method of collecting whatever tribute he paid to the Romans. Thus, on one occasion Herod granted immunity to Zamaris and to his followers settling on the borders of Trachonitis.[71]

[64] *Synodoi,* or *Synedria.* Three of the five districts were located in Judea proper (Jerusalem, Jericho, and Gazara, or Gezer), the capitals of the fourth and fifth districts being Amathus (mod. Amatha located in the vicinity of the Jordan, north of the Jabbok) and Sepphoris (Galilee) respectively. Schürer, op. cit., I, 340, n. 8.

[65] Josephus, *Ant.,* XIV, 5: 4; *Bell. Jud.,* I, 8: 5.

[66] Josephus, *Ant.,* XIV, 10: 2.

[67] Ibid., XIV, 10: 6.

[68] For the collection of taxes among the Babylonians, see Johns, *B.A.L.C.L.,* 115, 324–325.

[69] Josephus, XIV, 10: 5.

[70] *rex socius.*

[71] Ibid., XVII, 2: 1.

Josephus also presents two specific instances of a partial remission of taxes in Herod's time.[72] Such acts of generosity on the part of the king sprang from a desire to gain the goodwill of his refractory subjects. On the death of Herod, Archelaus likewise reduced the taxes in response to numerous appeals.[73] Under the Roman system of taxation, dating from the deposition of Archelaus, these arrangements practically ceased.[74]

The banishment of Archelaus by the Romans in A. D. 6 had an important bearing on the internal administration of the land. Henceforth the territory[75] of the deposed ethnarch was administered by procurators, Judea having been converted into a Roman province. The chief function of the procurators, as the name itself imports, consisted in levying the taxes destined for the imperial treasury, or *fiscus*. The eleven toparchies of Judea, mentioned by Josephus, probably originated in the Roman period. According to Pliny, Judea was divided into ten districts,[76] thus reminding us of an earlier division of the land into five administrative districts under Gabinius, the proconsul of Syria. In all these cases we evidently have to do with so many taxation areas.

Of the fiscal burdens imposed upon the people, the taxes levied on the produce of the soil,[77] and the

[72] A third (XV, 10: 4); a fourth (XVI, 2: 5).

[73] Ibid., XVII, 8: 4.

[74] Ibid., XVII, 11: 2.

[75] Judea, Samaria, and Idumea, including the cities of Jerusalem, Samaria, Caesarea, and Joppa.

[76] *Hist. Nat.*, V, 70.

[77] *Tributi soli*, or *agri*.

personal tax[78] of the Roman census come under the category of direct taxes.

The census taken by Quirinius[79] apparently had for its object the enrolment of persons by families and the valuation of property on which taxation was based, as in the periodic enrolments of the Egyptian papyri.[80] The Greek term[81] used in Matthew 22:17 f. and Mark 12:14 f. corresponds to the Latin word census and denotes the annual tax or tribute levied on individuals[82] and landed property.[83]

The payment of tribute to Caesar came to be regarded by many as treason against Yahwe, the only Lord of the Hebrew theocracy. Judas of Galilee, moreover, denounced the Roman census of the year 6 A. D. as a case of incipient slavery to the Romans. In a word, the census of Quirinius was a source of much disaffection, causing alarm and revolt.[84]

[78] *Tributi capitis.*

[79] Luk. 2:1–5. Cf. Schürer, op. cit., I, 508 f.; Ramsay, *Was Christ Born at Bethlehem,* 100 f.

[80] Ramsay, op. cit., 131 f.

[81] *κῆνσος.*

[82] Cp. *ἐπικεφάλαιον* ('capitation tax'), the marginal reading for *κῆνσος.* Mk. 12:14. In Syria both men and women had to pay the poll-tax, the required age-limit being fourteen to sixty-five and twelve to sixty-five respectively.

[83] Mtt. 22:17 f. (cp. 17:25); Mk. 12:14. For the meaning of *κῆνσος,* see Preuschen, *Griechisch-Deutsches H.W.B. z.d. Schriften d. N.T.,* 602. The census ordered by Augustus was carried out for purposes of registration as regards population, property, trades, etc. This was an indispensable prerequisite to taxation. The Greek term *φόρος* (Lk. 20:22; 23:2; 1 Macc. 8:4, 7) is equivalent to the Hebrew *midda,* const. *middat* (2 Esdr. 4:20; 6:8; Neh. 5:4), the tax or tribute levied on houses, lands, and persons. Cp. Ass. *mandattu, madatu,* from *nadanu,* to give.

[84] Acts 5:37; Josephus, *Ant.,* XVIII, 1:1, 6; XVIII, 2:1; XX, 5:2.

The actual collection of these taxes was entrusted to native commissions, the indirect taxes, such as tolls,[85] being farmed out to the publicans.[86]

Besides the taxes already mentioned we also meet with the imposition of sacred tributes for the maintenance of the sanctuary and the sacrificial ritual. The claim of Yahwe to the firstborn of family and herd and flock may be traced back to a very remote period.[87]

The firstborn was anciently regarded as the best of all possessions. How appropriate, therefore, that the firstborn son should be given to Yahwe.[88] The substitution of the Levites for the firstborn Israelites, adverted to in Num. 3:12 f., had for its object the satisfaction of Yahwe's claim to the firstborn. The sum total of male Levites above a month old was but twenty-two thousand and that of the firstborn Israelites of the same age and sex twenty-two thousand two hundred and seventy-three. The number in excess of the twenty-two thousand is to be redeemed[89] at five sheqels for every person, the redemption-money falling to the priests. "And for the redemption of the two hundred and seventy-three of the firstborn of the Israelites, who are over

[85] Schürer, op. cit., I, 475 f.

[86] Most of the publicans were Jews. Lk. 19:1; Josephus, *Bell. Jud.*, II, 14:4. In the New Testament the term 'publican' is virtually synonymous with 'sinner.'

[87] 'Every first birth is mine.' Ex. 34:19[a] (*J*). Cf. Baentsch, ad loc.

[88] Ex. 22:28[b] (*E*); 13:1 (*P*).

[89] The inference that the ancient Hebrews actually sacrificed their firstborn sons to the God of Israel lacks substantiation. Human sacrifice was at no time an integral part of the religion of Yahwe, but an excrescence of the Canaanitish cult. Baentsch, *Ex.*, 89–90, 203; Smith, *Rel. Sem.*,[2] 464–465; Wellhausen, *Prolegomena*, 88–89.

and above the number of the Levites, thou shalt take five sheqels[90] apiece according to the census;[91] by the standard of the sheqel of the sanctuary shalt thou take them (the sheqel is twenty gerahs). And thou shalt give the money, with which the odd number of them is redeemed, to Aaron and to his sons. And Moses took the redemption-money, . . . one thousand three hundred and sixty five sheqels, by the standard of the sheqel of the sanctuary;'' and gave it to Aaron and to his sons.[92]

The idea of sanctity attaching to the firstborn in general necessarily includes the male firstlings of flock and herd.[93] In early times these were brought to Yahwe on the great festivals and sacrificed, thus forming the occasion of a festal meal at one of the local sanctuaries. Deuteronomy, preserving its ancient character, particularly emphasizes that Yahwe cannot accept imperfect[94] animals in sacrifice. 'All the male firstlings of thy herd and of thy flock thou shalt consecrate to Yahwe thy God; thou shalt do no work with the firstling of thy herd, nor shear the firstling of thy flock. Thou, together with thy household, shalt eat it before Yahwe thy God year by year in the place which Yahwe shall choose. But if there be in it a blemish, such as lameness or blindness or any evil blemish whatever, thou shalt

[90] About three dollars.

[91] *Gulgolet* (Ass. *gulgullu, gulgullatu,* Ar. *jalaja,* also *jumjuma*), from *gulgult* (G-K, *Heb. Gram.* §84 bp.), 'head' (poll), N. H., 'head-money.'

[92] Num. 3: 46–51 (*P*). Cf. Kent, op. cit., p. 228.

[93] Ex. 22: 29; 13: 2, 11–13; 34: 19–20.

[94] It was wholly immaterial as to whether the attribute of 'imperfection' was due to a physical or religious cause.

not sacrifice it to Yahwe thy God."[95] Accordingly all male firstlings coming under the category of 'unclean animals'[96] must be redeemed. 'But for the firstling of a cow, or the firstling of a sheep, or the firstling of a goat, thou shalt not receive a ransom; they are holy; thou shalt sprinkle their blood upon the altar, and shalt burn their fat as a fire-offering of sweet savour unto Yahwe. Their flesh, however, shall be thine; like the wave-breast and the right thigh, it shall be thine."[97] It will be noticed that the priestly code assigns every first birth to the priests.[98]

The transition from the life of the desert to that of agriculture naturally suggested the idea of bringing to Yahwe the first products of the field, in addition to the firstlings of cattle.[99] According to Ex. 34: 26 the Deity is entitled to a portion of the new produce: 'the best,[100] the first-fruits[101] of thy ground shalt thou bring to the house of Yahwe thy God."[102] So again, 'thou shalt offer punctually

[95] 15: 19–21; cp. 14: 23 f.

[96] The horse, the ass, and the camel. So Philo. But see Smith, *Rel. Sem.*,[2] 290 f., 466 f.; Jastrow, *R.B.A.*, 662; Baentsch, *Lev.*, 399.

[97] Num. 18: 17–18.

[98] 18: 15–16.

[99] Whilst vegetable offerings predominate in the Babylonian cult, sacrifices of both animals and vegetable products "date from the earliest period of the Babylonian religion of which we have any knowledge. In a long list of offerings, *Gudea* includes oxen, sheep, goats, lambs, fish, birds, and also such products as dates, milk, and greens. From other sources we may add date wine, butter, cream, honey, garlic, corn, herbs, oil, spices, and incense." Jastrow, op. cit., 661.

[100] *reshit;* cp. Ass. *resheti.*

[101] *bikkurim.*

[102] 23: 19; cp. Lev. 23: 10 f.

thine abundance and the best of thy winepress."[103] That we are without information how much was expected of the ancient Israelite in this direction is perfectly obvious, the amount of the offering being left to the free will of the individual offerer.[104] In process of time, however, such freewill offerings assume a more definite aspect, possibly on account of the growing complexity of the ritual. Thus Amos 4: 4 speaks of the sanctuary tithe at Bethel.[105] In Genesis 28: 22 Jacob, the founder of the Ephraimite sanctuary, promises to pay a tithe of all his possessions.[106]

The tithe at this period was not necessarily an impost payable in kind to the sanctuary, nor does it seem to have been appropriated to the maintenance of the priesthood. It was a spontaneous offering or sacrifice which took the form of a sacrificial meal at the sanctuary. An instructive passage occurs in Deut. 14: 22 f., where the produce of the soil is to be tithed and consumed by the offerer and his family

[103] Ex. 22: 28.

[104] See above, p. 199.

[105] Eighth century B. C.

[106] (*E.*) Abram is said to have given a tenth part of the booty to Melchizedek. Gen. 14: 20. The Greeks, it may be noted, rendered a tithe to the gods of the spoils of war, and of the annual crops. The tithe was also known in Egypt (Maspero, *Struggle of the Nat.*, 312), Babylonia (Jastrow, op. cit., 668), and Arabia (Pliny, op. cit., XII, 63). The Muslim tithe is a religious tax, exacted on harvests and flocks, goods and chattels, gold and silver. Cp. Letourneau, *Property*, 203. In accordance with the system of *Muhammadan* taxation "land irrigated by the water-wheel or other laborious methods pays five per cent. of its produce in the name of charity-tax, whereas land that does not require laborious irrigation pays a full tithe." *Rel. Sem.*,[2] 96–97. Lastly, the custom of tithing is known to have existed in China, Lydia, Carthage and Rome.

at the central sanctuary in connection with a sacred feast. 'Thou shalt tithe all the produce of thy seed growing in the field year by year, and thou shalt eat the tithe of thy grain, of thy new wine, and of thine oil before Yahwe thy God, in the place which he shall choose as a dwelling for his name. But if the way be too long for thee so that thou art not able to carry it (thither), . . thou shalt turn the tithe into money and shalt wrap up the money in thy hand, and shalt go to the place which Yahwe thy God shall choose; then thou shalt spend the money for whatever thou desirest, for oxen, or for sheep, or for wine, or for strong drink, or for whatever thine appetite craveth; and thou shalt eat it there before Yahwe thy God, and rejoice, thou and thy household and the Levite who dwelleth within thy town.' The equation of the tithe in Deut. 26:2 with *reshit,* or first-fruits, is interesting.[107] In accordance with ancient custom a small portion of the tithe is to be put in a basket and formally presented at the altar by the priest. The repetition of a prescribed form of thanksgiving or prayer by the person who makes the offering constitutes an essential part of the ceremony of presentation.[108]

As a result of the destruction of the high places and rural shrines attendant upon the reforms of

[107] Steuernagel, *Deut.,* 55, 93 f. As Wellhausen says: "With the tithe of the fruit of the soil the first-fruits are at bottom identical; the latter were reduced to definite measure later and through the influence of the former. This is no doubt the reason why in the Jahwistic legislation tithe and first-fruits are not both demanded, but only a gift of the first and best of corn, wine, and oil, left to the free discretion of the offerer, which is conjoined with the firstling of cattle and sheep." Op. cit., 157.

[108] Deut. 26: 5–10.

Josiah, the triennial tithe[109] shall be given to the dispossessed Levite, to the widow, and to the poor.[110] The charity-tithe of the third year, it may be noted, is spoken of as the 'full tithe'[111] in contradistinction to the annual tithe[112] exacted on the produce of the soil.[113] We would, therefore, conclude that the tithe of the pre-exilic period did not always represent the tenth part of the produce. "In antiquity tithe and tribute are practically identical, nor is the name of tithe strictly limited to tributes of one-tenth, the term being used to cover any impost paid in kind upon a fixed scale."[114]

It will not be amiss at this juncture to say a word as to Ezekiel's theocratic state of the future. The prince, although entitled to certain fixed dues, is held responsible for the expenses of the public worship.[115] This provision is by no means to be dissociated from the precedents of the past. It is a well-known fact that the expenses incurred in connection with the maintenance of the temple at Jerusalem were defrayed for the most part out of the king's revenue. "In other words, the maintenance of the royal sanctuary was a charge on the king's tithes."[116]

Yahwe's share of the first-fruits presented at the altar doubtless went to the Levitical priests. Even-

[109] Cf. p. 200; cp. Am. 4: 4.

[110] Deut. 26: 12 f. This tithe is to be paid in 'the year of tithing.'

[111] כל מעשר. Cf. Deut. 14: 28; 26: 12.

[112] מעשר, 14: 22 f.

[113] Steuernagel, op. cit., 54–55. But see Smith, J. M. P., *The Deuteronomic Tithe,* in *Am. Jour. Theol.,* v. XVIII, 122 f.

[114] Smith, *Rel. Sem.,*[2] 245.

[115] See above, pp. 204–205.

[116] *Rel. Sem.,*[2] 246.

tually the whole tithe fell to the Levites and to the priests[117] on the principle that the priestly tribe was to live on Yahwe's inheritance,[118] the institution of the tithe of pre-exilic times having been divested of its spontaneity, and converted into a tax on agricultural produce.[119] The only difference between earlier and later practices with respect to taxation is that, whereas in the earlier literature the taxes are paid directly to the reigning monarchs, in the priestly code it is the priests who receive the taxes.

The author of Lev. 27: 32–33 further augments the income of the priests by adding a tithe of the annual increase of cattle. 'As regards all the tithe of the herd and the flock, the tenth of whatever passeth under (the counting-) rod (of the shepherd), shall be holy to Yahwe. The owner shall not dis-

[117] See above, pp. 202–203.

[118] Num. 18: 25.

[119] Num. 18: 21 f., Neh. 10: 37–39; 12: 44–47; 13: 5, 12; Mal. 3: 8, 10; Lev. 27: 30–31. The prescriptions of the law relating to the payment of tithes were scrupulously observed in the time of Jesus. Mtt. 23: 23; Lk. 11: 42; 18: 12. According to the Mishna "everything which may be used as food and is cultivated and grows out of the earth is liable to tithe." *Maaserot,* 1: 1. The Mishna, moreover, speaks of a second or additional tithe. This second tithe evidently represents a harmonistic device of the Jewish legalists with regard to the regulations of Deut. 14: 22–29 and Num. 18: 21–28 respecting the tithe. Both passages, however, doubtless refer to one and the same tithe, the discrepancy between them arising from the fact that they belong to different stages in the history of the institution. Driver, *Deut.,* 170 f. The 'third tithe,' alluded to in Tob. 1: 8, and in Josephus, *Ant.,* IV, 8: 22, was levied triennially for the relief of destitution on the supposition that the Jews were required to pay three tithes every third year, to wit, the Levitical tithe, an additional tithe intended for the celebration of sacred festivals, and a charity-tithe.

tinguish between good or bad, nor shall he change it; but if he change it, both it and that for which it is changed shall be holy; it may not be redeemed."[120]

To defray the cost of public worship a poll-tax of half a sheqel is imposed on every adult Israelite, inasmuch as the support of the regular cultus did not devolve upon the priesthood but upon the laity. 'This is the sum that each shall give, . . . half a sheqel according to the standard of the sanctuary (the sheqel is twenty gerahs); half a sheqel as an offering to Yahwe. Every one subject to the census, from twenty years old and upward, shall present the offering of Yahwe. The rich shall not give more, and the poor shall not give less than the half sheqel."[121] Only coins of normal weight will be accepted. Nehemiah's annual temple tax of one-third of a sheqel represents an accommodation to the Persian monetary system, a Persian coin of this denomination being the equivalent of the Jewish half sheqel.[122] The political independence of the Jews under Simon, the Maccabee, accounts for the reversion of the Jewish coinage to the older type. In the time of Jesus the temple tax came to be known as *the two drachmae*.[123] As the sheqel equalled four Attic *drachmae*,[124] the amount required of every male Israelite for the maintenance of the sanctuary at

[120] Cp. 2 Chron. 31: 5 f. There is a reference in 1 Sam. 8: 17 to a royal tithe of cattle.

[121] Ex. 30: 13–15 (P^s); cp. 38: 25 f., 2 Chron. 24: 6, 9.

[122] Neh. 10: 32 (33). Cf. Baentsch, *Ex.* 262.

[123] Mtt. 17: 24, 27; Josephus, *Ant.*, XVIII, 9: 1; Mishna tractate: *Sheqalim*.

[124] Josephus, op. cit., III, 8: 2.

Jerusalem would be none other than the half sheqel of earlier times. With the destruction of Jerusalem in the year 70 A. D., this yearly tax was appropriated by the Romans and applied to the support of the temple of Jupiter Capitolinus in Rome.[125]

[125] *Bell. Jud.*, VII, 6: 6.

CHAPTER XIV

THE DEVELOPMENT OF INDIVIDUAL LANDOWNERSHIP IN ISRAEL

To recapitulate what has already been said elsewhere regarding the general progress of ideas of ownership in Israel, we have first to allow for an early stage of tribal organization, suggestive of the onetime existence of matriarchy by the side of patrilineal descent. In a state of society essentially nomadic in character,[1] each tribe or clan generally occupies a given district, over which it exercises an undefined but operative sense of group ownership arising in all probability from the right of possession or from a vague sense of the preferential right of personal labor.[2] The digging of a well, for example, establishes a right of possession, and hence the frequent quarrels about watering-places[3] and pastures. "Property in water," Robertson Smith points out, "is older and more important than property in land. In nomadic Arabia there is no property, strictly so called, in desert pastures, but certain families or tribes hold the watering-places

[1] Meyer, *Die Israeliten u. Ihre Nachbarstämme,* 129 f., 158, 303 f.; but compare Eerdmans, *Alttest. Stud.,* II, 38 f., *The Expositor,* Ser. 7, v. 6 (1908), 118 f.

[2] Property in land, among the ancient Teutons, was looked upon as the reward of labor. Cf. Schroeder, *Lehrbuch d. deutschen Rechtsgeschichte,* 202–203.

[3] Gen. 21: 25, 30; Gen. 26: 15 f., Ex. 2: 16; cp. Gen. 29: 8; Judg. 1: 15.

without which the right of pasture is useless.'"[4] The same principle applies to the acquisition of new territory, as in the case of the Hebrew tribes settling in the land of Canaan. Thus a tribal group or perhaps a smaller body of men marches against the enemy and takes possession of his land by virtue of the right of conquest, the conquered inhabitants being in part exterminated, enslaved, or assimilated by the invaders.[5] In other words, the new acquisition is looked upon as the reward of valor. Apart from the feeling of solidarity, the land thus acquired naturally belongs to the group. The transition from nomadism or semi-nomadism to the settled, agricultural, community life of Canaan brings with it a further internal sense of ownership. In settled communities the building of a house or the cultivation of the soil ordinarily creates ownership.[6] So in pre-Islamic times a man acquires rights in the soil by cultivating a piece of land.[7] The institution of private property, then, in ancient Arabia at least, may be said to commence with the introduction of agriculture.[8] Similarly the settlement of Canaan by the Hebrew clansmen could not but give rise to a new conception of property. Although the clan

[4] *Rel. Sem.*,[2] 104.

[5] See above, pp. 86 f.

[6] *Rel. Sem.*,[2] 95. On the growth of land tenure in Babylonia, see Johns, op. cit., 184 f.; Cuq, op. cit., 721 f.

[7] According to the law of Islam all lands which have never been cultivated or occupied by houses become private property (*mulk*) by being 'quickened,' or brought under cultivation. 'At Mecca the *Quraysh* dug wells and built houses and enjoyed the full right of property in the work of their hands.' *Rel. Sem.*,[2] 96, 144. Cp. Klein, *Zeitschrift d. Deutschen Pal. Vereins*, IV, 72.

[8] Wellhausen, *R.A.H.*, 105; *Rel. Sem.*,[2] 105.

remained the social and political unit for many generations posterior to the conquest, the time was bound to come when local considerations would predominate in view of the changed conditions. It is true that a considerable portion of the native population was enslaved. But the servile Canaanites alone did not suffice for all the economic needs of the Hebrews. Furthermore, it will be remembered, that the permanent settlement of the land was effected to a very large degree by a process of amalgamation resulting in the engrafting of the unconquered urbanites on the Israelitish stock. The numerous influences affecting the social fabric of the new community tended to a gradual displacement of the simple tribal arrangements of pre-monarchial times by the individualism of Canaanitish culture and commercialism. In process of time many estates, originally constituting part and parcel of the lands assigned to various Hebrew tribes and their subdivisions, or 'families,' fell into the grasp of the wealthy classes residing in the cities. At all events, the concentration of landed property under the Hebrew monarchy is an incontrovertible fact. Hence the distress of the peasantry and the subsequent legislative enactments on behalf of the poor.

The institution of private property comes into prominence in the regal period. Henceforth the devolution of property is subject for the most part to the principle of agnation. The preferential right of the eldest son consists of a double portion of the patrimonial estate.[9] Failing a son the nearest agnate is entitled to the succession.

[9] Cf. Stade, *G.V.I.*, I, 392.

By the side of individual landownership, however, there are certain phenomena pointing in the direction of an earlier conception of property. Thus the levirate[10] has all the appearance of an ancient tribal institution. In Deut. 25:5–10 the custom is restricted to brothers dwelling together on the same family estate. "If brothers dwell together,[11] and one of them die without having a son, the wife of the deceased shall not be married to a man outside the clan;[12] her husband's brother shall go in unto her, and make her his wife, and perform the duty of a husband's brother to her. The first son whom she beareth shall succeed to the name of his brother who is dead, that his name may not become extinct in Israel."[13] Limiting the question of origins to our discussion of the subject in a previous chapter,[14] we would venture the assertion that it was a collateral object of the institution to prevent the alienation of property appertaining to the family group. Again, there is a strong presumption that the law of the jubilee[15] was enacted in the interests of the clan or village community.[16] Granting

[10] See above, pp. 57 f.

[11] 'in the same locality.' So Steuernagel, ad loc.

[12] For Heb. *zar*, see Gesenius, *H.W.B.* (1905), 184.

[13] 25: 5–6. Kent, op. cit., p. 56.

[14] See above, pages 62–64.

[15] Cf. pp. 165 f.

[16] Buhl, in *The American Journal of Theology*, I (1897), 738; cp. Ibid., *S.V.I.*, 60. The jubilee, according to Eerdmans, 'ist eine Vermittlung zwischen dem Kommunismus und dem Privatbesitz, welche an sich bei einfachen Verhältnissen nicht unausführbar erachtet werden darf. Dass eine solche Institution dem wachsenden Strom des Privatbesitzes keinen Widerstand bieten konnte, beweist nicht, dass sie nur ein unpraktisches Ideal einer Priesterschule ist, wie man

the possibility of a form of vassalage[17] under the Hebrew monarchy,[18] we are also constrained to note the coexistence of free village communities in pre-exilic times.[19] The towns and villages of the time of Amos, for instance, constituted the basis of military enrolment, each community furnishing a proportionate number of men in case of war.[20]

Under the old tribal system the clan, as already stated, was the social and political unit. Originally the matter of tenure had been vested in the clan. But with the increase of population and the spread of agriculture fresh villages would be established, not by considerable bodies of clansmen, but by numerous offshoots from the original settlements. As a result of this development the point of emphasis is shifted from the tribe or clan to the several family groups which had taken up their abode in these agricultural villages. For the time being the ownership of such lands was forced into a tribal mould, as is seen from the frequent mention

jetzt gewöhnlich annimmt. Sie kann mit mehr Wahrscheinlichkeit betrachtet werden als ein Nachklang früherer Zustände. Die Religion ist immer konservativ und stets bestrebt, alte und ehrwürdige Institutionen aufrechtzuerhalten, auch wenn die geänderten Verhältnisse sich mit diesen Institutionen nicht mehr vertragen wollen. Schliesslich siegen die Lebensverhältnisse über solche Institutionen, dieser Prozess ist jedoch ein sehr langer und die Institutionen können tatsächlich eines natürlichen Todes gestorben sein, ohne dass darum die Geistlichkeit schon geneigt wäre, solches anzuerkennen.' Op. cit., v. IV, 126–127.

[17] According to Robertson Smith 'the older Semitic kingdoms were not feudal.' Op. cit., 92.

[18] 1 Sam. 8: 12; Ezek. 45: 7 f.

[19] Buhl, op. cit., 46; also compare the '*Am-ha-ares* of the Hebrews, see above, chap. VIII, note 56.

[20] Am. 5: 3. Cf. Gesenius, op. cit., 531.

of the *migrashim,* or common pasture lands. "The pasture ground remained common property longest, while the cultivated ground gradually became the private possession of individuals."[21]

Finally, it is not improbable that the law of the sabbatical year[22] owes its origin to a state of communistic agriculture.[23] According to Ex. 23:10 f. the landless Israelite has a right to share in the produce of the seventh year. There is much in favor of the supposition that the harvest of the seventh year belonged to all Israelites in common. This, of course, would amount to a serious 'limitation of the private ownership of realty for the good of the whole community.'[24]

The institution of private property, as previously remarked, triumphed in the end.[25] With the consolidation of the kingdom under David and Solomon the tribal life of Israel assumed a different aspect. But the tenacity of the old tribal system was such as to leave its impress on the internal administration of the various communities, the royal government contenting itself apparently with the receipt of the usual taxes and tribute.[26] All the essential functions of government in the towns and villages of pre-exilic Israel were in the hands of a council of elders,[27] composed of the heads of families or clans

[21] Buhl, *The American Journal of Theology,* I (1897), 733.
[22] See above, pp. 161–164.
[23] Wellhausen, *Proleg.,* 118.
[24] Buhl, op. cit., 739; *S.V.I.,* 64; Wellhausen, loc. cit.
[25] See above, pp. 209–210.
[26] Benzinger, *H.A.,*[2] 261 f.
[27] *zeqenim.*

residing in each community.[28] During the exile the elders appear as the official representatives of the clans, acting on their behalf on every important occasion.[29] The return from the Babylonian exile, it may be noted, was a concern of the clan as a whole, and not a matter of individual initiative.[30] The 'elders of the Jews,' as we learn from the book of Ezra,[31] were recognized by the Persian satrap as the hereditary representatives of the Jewish community.

[28] Cf. Judg. 8: 14 (Succoth); 11: 5–11 (Gilead); 1 Sam. 11: 3 (Jabesh); 16: 4 (Bethlehem); 30: 26 and 2 Sam. 19: 12 (Judah); 1 K. 21: 8, 11 (Jezreel); 2 K. 10: 1–5 (Samaria). See Schürer, op. cit., II, 176 f.

[29] Ezek. 8: 1; 20: 1.

[30] Ezra 2; Neh. 7: 7 f.

[31] *śabe yehudaye,* 5: 5, 9; 6: 7, 8, 14.

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